





Guideline #1: Introduction



PAY EQUITY IMPLEMENTATION SERIES (REVISED)

The Pay Equity Implementation Series is designed to help in the self-managed process — or where bargaining agents are involved, the negotiated process — of achieving pay equity. The series is meant for employers, employees and bargaining agents and is published in a sequence that generally reflects the order in which questions arise in the process of developing a pay equity plan.

Purpose of the Guidelines

The Pay Equity Commission published the series of guidelines to:

- ▶ Clarify the responsibility of those involved with pay equity.
- ► Focus on all relevant sections of the *Pay Equity Act*, R.S.O. 1990, c. P.7, as amended (the *Act*) regarding a particular issue.
- ▶ Provide some suggestions as "how to" options.
- ▶ Direct users to other relevant information such as the decisions of the Pay Equity Hearings Tribunal and educational material produced by the Commission.

The examples and illustrations provided are just some options that may be followed. Employers and bargaining agents may consider other options consistent with the spirit and intent of the Act.

If a review officer becomes involved in the pay equity process, they will consider the content of the guidelines but will not be limited to the options provided in them. Instead, review officers will work with the affected parties and consider the unique circumstances that exist in each employment situation.

The Role of the Pay Equity Hearings Tribunal

The Pay Equity Hearings Tribunal decides whether pay equity is being or has been achieved in a manner consistent with the *Act*. The guidelines do not restrict the Pay Equity Hearings Tribunal in its review of cases.

Overview of Pay Equity

Pay equity is equal pay for work of equal or comparable value. The *Pay Equity Act* was made law to narrow the wage gap that exists between women's and men's wages that was due to the undervaluing of work traditionally done by women.

The law requires the *value* of jobs usually done by women be compared to the *value* of jobs usually done by men. If their value is equal or comparable, they must be paid the same.

The original *Pay Equity Act* was passed in 1987 and became effective on January 1, 1988. Amendments to the legislation were added on July 1, 1993. The *Pay Equity Act*, R.S.O. 1990, c. P.7, as amended (the *Act*), assumes the following:

- ► Achieving pay equity is accomplished through a self-managed process or, in union workplaces, a negotiated process.
- ▶ Jobs performed predominantly by women are the focus. Jobs, not the employees doing the jobs, are compared.
- Similar jobs are grouped into job classes and their gender dominance is determined.
- ▶ Job classes dominated by women (female job classes) are compared to job classes dominated by men (male job classes) using the factors of skill, effort, responsibility and working conditions.
- ▶ The employer and, in union workplaces, the bargaining agent may define these four factors in any manner as long as they do not favour men's jobs over women's jobs.
- ▶ All female job classes and potential male comparator job classes are evaluated in a gender neutral way for direct comparisons using the job-to-job comparison method.
- ▶ If a female job class is found to be of equal or comparable value to a higher-paid male job class, then the female job class must be paid at least the same.
- ▶ If a female job class cannot be directly compared with a male job class of equal or comparable value or one which has a lower value but is more highly paid, an indirect comparison method (proportional value) must be applied to determine if pay equity exists for the female job class.
- ▶ Public sector employers who cannot achieve pay equity using either the job-to-job or proportional value comparison method must do proxy comparisons.

- ▶ No employee's pay can be lowered to achieve pay equity.
- ▶ All employees working in female job classes will receive pay equity adjustments if their job class was found to be lower paid after the pay equity comparisons were made. The Act does not affect the compensation of male and gender neutral job classes.

When implementing pay equity, employers and, in union workplaces, bargaining agents will:

- ▶ Define the factors of skill, effort, responsibility and working conditions.
- ▶ Select a gender neutral job comparison method.
- ▶ Determine or, in union workplaces, reach agreement on the results of job evaluation.
- ▶ Assess the extent of pay inequities if any.
- ▶ Determine how pay equity adjustments will be distributed.

List of Guidelines

In the revised Pay Equity Implementation Series, there are 16 guidelines:

Guideline #1: Introduction

Guideline #2: Definition of Employer

Guideline #3: Calculating the Number of Employees

in the Private Sector

Guideline #4: Definition of Establishment

Guideline #5: Determining Job Class

Guideline #6: Using the "Group of Jobs" Approach

Guideline #7: Determining the Gender Predominance of Job Classes

Guideline #8: Disclosing Information

Guideline #9: Gender Neutral Job Comparison Guideline #10: Which Job Classes to Compare

Guideline #11: Determining Job Rate

Guideline #12: Permissible Differences in Compensation

Guideline #13: Pay Equity Adjustments

Guideline #14: Pay Equity Plans

Guideline #15: Dispute Resolution I - Review Services

Guideline #16: Dispute Resolution II - Pay Equity Hearings Tribunal

Format of Guidelines

Each guideline provides information under five headings:

- Significance: Highlights why the guideline may be important to the reader to determine whether they need to read further.
- Explanation: Explains and illustrates how to comply with the Act. It also draws on all the sections of the Act dealing with a particular issue.
- Relevant Sections in the Act: Compiles all the sections of the Act relevant to the specific guideline.
- References: Refers to sections in the *Act* other than the ones being discussed directly, or to other documents. Where appropriate, additional reading material is also listed.
- For More Information: Provides the address and phone numbers of the Pay Equity Commission.

Call the Commission's Information Hotline

The guidelines are written to address the most typical situations; they cannot possibly cover all potential circumstances. Employers, employees and bargaining agents are encouraged to call the Commission's toll-free hotline with their specific questions (these numbers are also at the end of each guideline). For **Ontario-wide** (toll free), call 1–800–387–8813 or in the **Toronto area**, call (416) 481–3314.



Directive no°1 est également disponible en français. Revised May 1994 CAZON PECI - PIZ

Guideline #2: Definition of Employer



PAY EQUITY IMPLEMENTATION SERIES (REVISED)

The Pay Equity Implementation Series is designed to help in the self-managed process — or where bargaining agents are involved, the negotiated process — of achieving pay equity. The series is meant for employers, employees and bargaining agents and is published in a sequence that generally reflects the order in which questions arise in the process of developing a pay equity plan.

SIGNIFICANCE

The term employer is not defined in the *Pay Equity Act*, R.S.O. 1990, c. P.7, as amended (the *Act*). In most cases, determining the employer is straightforward. In some instances, however, corporate ownership, organizational structure and financial interrelationships make the employer more difficult to identify.

Under the Act, the employer is responsible for implementing and achieving pay equity. How the employer is defined determines:

- ▶ The number of employees that organization has in Ontario. For a private sector employer, this determines whether the organization is covered by the Act, whether a pay equity plan should have been posted, the schedule for compliance and the payroll on which the wage adjustments are based.
- ► The nature of the relevant establishment(s) and scope of comparisons between female job classes and male job classes that will be available.

EXPLANATION

In the majority of cases, employers, bargaining agents and employees know who the employer is. When the identity of the employer is not clear, a number of tests or questions may be applied. No single factor, however, can determinate the employer.

On June 30, 1989, the Pay Equity Hearings Tribunal issued a decision determining the employer of the police in the Regional Municipality of Haldimand–Norfolk.

In paragraphs 45 and 46 of its decision, the Tribunal writes:

... The Tribunal must decide who is the employer on the facts in the case before it; however, the tests that it applies must utilize criteria that best accord with the objectives, structure and scheme of the *Pay Equity Act*, 1987.

The definition of employer for one Act does not restrict another definition for purposes of pay equity. It is for the Tribunal to interpret the statute where no definition of employer exists . . .

The Tribunal outlines in paragraph 51 the following four tests that it applied in determining the employer:

1. Who has overall financial responsibility?

Who has responsibility for the budget? Who bears the financial burden of compensation practices, and the burden of wage adjustments under the *Act*? Who is responsible for the financial administration of the budget? What is the shareholder investment or ownership? Who bears the responsibility of picking up the deficit or benefiting from the surplus?

- 2. Who has responsibility for compensation practices? Who sets the overall policy for compensation practices? Who attaches the value of a job to its skill, effort, responsibility and working conditions? What is the labour relations reality? Who negotiates the wages and benefits with the union or sets the wage rate in a non-unionized setting?
- 3. What is the nature of the business, service or enterprise? What is the core activity of the business, service or enterprise? Is the work in dispute integral to the organization or is it severable or dispensable? Who decides what labour is to be undertaken and attaches that responsibility to a particular job? What are the employees' perceptions of who is the employer?
- 4. What is most consistent with achieving the purpose of the Pay Equity Act?

If there is more than one possible employer, it assists the Tribunal in its determination to make reference to the purpose and objectives of the *Act*.

The decision continues: "The criteria which the Tribunal will apply may have more or less relevance in each fact situation, as the implementation of the law evolves and as other cases come before the Tribunal."

The case law from the Pay Equity Hearings Tribunal has continued to evolve with the release of the following decisions: *Middlesex-London Health Unit*, *Metropolitan Toronto Library Board*, *Barrie Public Library Board*, *Porcupine Health Unit* and *Kingston-Frontenac Children's Aid Society*. Although the four tests developed in the *Haldimand-Norfolk* case remain intact, the Tribunal continues to take a case-by-case approach.

The Pay Equity Office recommends that implementors of pay equity be aware of the Tribunal's tests for determining employer but, at the same time, realize these tests were applied to specific facts and circumstances, most of which concerned the public sector.

The first private sector case dealing with the employer question that came before the Tribunal was *Thomson Newspapers*. In this case, the degree of financial control and the authority over compensation practices were the two main factors that significantly affected the determination of employer.

The Crown as the Employer

The amended Act states that the Crown (generally defined to mean the Government of Ontario and its agencies) is not the employer unless the employees in question meet the definitions of a civil servant, a public servant or a Crown employee under the Public Service Act. The only exceptions are:

- 1. The Crown and a bargaining agent agreed that the Crown was the employer for pay equity purposes, and a pay equity plan was posted according to that agreement before December 18, 1991.
- 2. In the case of non-union employees, the Crown posted a pay equity plan before December 18, 1991.
- 3. The Hearings Tribunal determined that the Crown is the employer before December 18, 1991.

- 4. An application in which the Crown's status as an employer was filed with the Hearings Tribunal before December 18, 1991.
- 5. A pay equity plan was prepared according to a review officer's order and posted before December 18, 1991.

New Employers

The Act recognizes two categories of employers:

- those in existence as of January 1, 1988 and
- new employers established after that date.

Employers who established their organizations after January 1, 1988 must achieve pay equity immediately.

If an organization is involved in a merger or an acquisition, it may change its identity after the effective date and, as a result, not fit easily into either of the two categories noted above.

If a "new" employer is created by purchasing assets and incorporating a new company, the new employer must establish and maintain compensation practices that ensure pay equity immediately if there are 10 or more employees. If the company is acquired through a purchase of shares, the old corporate entity continues as the employer.

The Act requires the purchaser of a business with an existing pay equity plan to make the adjustments on the dates specified in the plan (section 13.1). If the plan is no longer appropriate, a new one must be negotiated or prepared and posted, but no job class will receive a smaller pay equity adjustment in the new plan than in the old plan.

RELEVANT SECTIONS IN THE ACT

Defines the obligations of employers when Subsection 1(2) posting documents. Subsection 1(3) Specifies the obligations of employers to provide copies of posted documents. Subsections 1.1(1)–(5) Sets out when the Crown is the employer. Section 3 Defines which employers the Act applies to. Section 7 Defines the obligations of employers to establish and maintain pay equity. Section 9 Prohibits an employer from reducing compensation to achieve pay equity, and prohibits intimidation, coercion, etc. Section 11 Defines which employers must post pay equity plans. Section 12 Requires employers to compare female job classes with male job classes. Section 13 Sets out the details of preparing pay equity plans and scheduling pay equity adjustments. Section 13.1 Sets out the details of a sale of a business. Subsection 13.1(1) Specifies who assumes pay equity obligations in the sale of a business. Section 14 Sets out the requirements for negotiating pay equity plans with bargaining agents. Section 15 Sets out the requirements for posting pay equity plans where there is no bargaining agent. Sections 18 to 21 Sets out the choices available to employers with 10 to 99 employees regarding posting pay equity plans. Subsection 21.11(1) Defines potential proxy employer, proxy employer, seeking employer.

proxy employers.

Sets out how to get information from potential

Section 21.17

REFERENCES

Pay Equity Implementation Series (Revised) — Guideline #4: Definition of Establishment

Pay Equity Implementation Series (Revised) — Guideline #16:

Dispute Resolution II — Pay Equity Hearings Tribunal

Middlesex-London Health Unit (1989), 1 P.E.R. 89

Metropolitan Toronto Library Board (1989), 1 P.E.R. 112

Barrie Public Library Board (1991), 2 P.E.R. 93

Porcupine Health Unit (1991), 2 P.E.R. 198

Haldimand-Norfolk (No. 6) (1991), 2 P.E.R. 105

Kingston-Frontenac Children's Aid Society (No.2) (1992), 3 P.E.R. 117

Thomson Newspapers (1993), 4 P.E.R. 21

"Case Summaries of Two Tribunal Decision," Pay Equity Commission Newsletter, Vol. 2, No. 11, February/March 1990, p. 5-6.

FOR MORE INFORMATION WRITE OR CALL:

Pay Equity Commission 150 Eglinton Avenue East, 5th Floor Toronto, Ontario M4P 1E8

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Directive no °2 est également disponible en français. Revised May 1994

Guideline #3: Calculating the Number of Employees in the Private Sector



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SIGNIFICANCE

This guideline applies only to private sector employers, employees and unions. All public sector employers are covered by the *Pay Equity Act*, R.S.O. 1990, c. P.7, as amended (the *Act*) and have the same implementation deadlines regardless of the number of their employees.

For private sector employers, calculating the number of employees is important because that number determines:

- ▶ whether an employer is covered by the Act
- ▶ whether an employer is required to post a pay equity plan
- ▶ the required date for posting a pay equity plan and making the first pay equity adjustments if needed or for making retroactive payment of adjustments
- ▶ the required dates for achieving pay equity for small employers
- ▶ the schedule for making pay equity adjustments when applying the proportional value comparison method

EXPLANATION

Private sector employers who had an average of 10 or more employees in 1987 or who employ 10 or more employees at any time after this date are covered by the *Act*.

Employers with an average of 100 or more employees in 1987 must post a pay equity plan.

Employers with an average of 10 to 99 employees in 1987 had the option of not posting or posting a pay equity plan.

The mandatory dates for posting pay equity plans and for making first pay equity adjustments are based on the number of employees as follows:

Posting and First Adjustment Dates For Job-to-Job Comparisons

Average No. of Employees in 1987	Mandatory Posting of Pay Equity Plans	First Pay Equity Adjustment Date	
500 or more	January 1, 1990	January 1, 1991	
100 to 499	January 1, 1991	January 1, 1992	
50 to 99*	January 1, 1992	January 1, 1993	
10 to 49*	January 1, 1993	January 1, 1994	

^{*} If these employers chose *not* to post a plan, they must achieve pay equity by the first adjustment date.

Those employers who are late posting their plan(s) must make adjustments retroactive to the first adjustment date.

Part III of the Act, which covers small employers (those with 10 to 99 employees), was repealed on January 1, 1994. As of that date, these employers no longer had the option of posting a pay equity plan.

Posting and First Adjustment Dates For Proportional Value (PV) Comparisons

Number of Employees	Mandatory Posting of Amended Plans	First PV Adjustment	Adjustment Retroactive to	
50 or more**	January 1, 1994	January 1, 1994	January 1, 1993	
10 to 49**	January 1, 1994	January 1, 1994	January 1, 1994	

^{**} Private sector employers with 10 to 99 employees who chose to post a pay equity plan were required to post a notice informing employees and bargaining agents of this decision (subsection 20(1)).

Private sector employers with 50 to 99 employees who chose *not* to post a plan must achieve pay equity using the proportional value comparison method retroactive to July 1, 1993. Private sector employers with 10 to 49 employees should have achieved pay equity by January 1, 1994.

Calculating the Number of Employees

The Act became effective January 1, 1988. For private sector companies in existence on that date, the number of employees is the average number of employees employed from January 1, 1987 to December 31, 1987 or during that part of 1987 that the organization was in existence.

Definition of an Employee

An employee is defined as all full-time, part-time and casual employees except students working during their vacation.

Determining the Number of Employees

The number of employees means all employees of an employer throughout Ontario. Once the number of employees is determined, all establishments belonging to one employer must meet the same obligations and deadlines for compliance, regardless of the number of employees in each establishment. For more information on defining establishment, see Guideline #4.

The average number of employees, as defined above, can be calculated in several ways.

It is not necessary to determine the exact number of employees. It is necessary, however, to determine which category the employer falls under because these categories determine the employer's obligations and deadlines under the *Act*. The categories are:

- ▶ 10 to 49 employees
- ▶ 50 to 99 employees
- ▶ 100 to 499 employees
- ▶ 500 or more employees

It is important that the method used to calculate the average number of employees gives a *fair representation* of the actual number of employees throughout the year. The method should recognize employment fluctuations. For example, in a seasonal business where a large number of employees work only in June, July and August, an average based on monthly or quarterly figures might be more appropriate than an average based solely on January and December employment figures because these months do not reflect the summer payroll.

On the other hand, for employers whose workforces do not fluctuate, an average based on the number of employees working in January and in December may be representative. An averaging method that defeats the intent of the *Act* is not acceptable.

The following are some examples of ways of determining an average number of employees:

Monthly: The sum of the number of employees on payroll for

each month of the year, divided by 12.

Quarterly: The sum of the number of employees on payroll at the

end of each quarter, divided by four.

Annually: The number of employees on the first payroll in

January plus the number of employees on the last

payroll in December, divided by two.

Instead of calculating an average, an employer may choose to use the largest number of employees employed at any point during 1987 as the number of employees for the purpose of the *Act*.

Changes in Numbers of Employees Since January 1, 1988

There are four principles that apply to changes in the number of employees since January 1, 1988:

- 1. For employers in existence before January 1, 1988, pay equity obligations and deadlines are determined by the average number of employees during 1987.
- 2. Employers who came into existence after January 1, 1988 and employers with fewer than 10 employees in 1987 are required to achieve and maintain pay equity from the date their tenth employee is hired. They cannot make pay equity adjustments in annual increments.
- 3. Once the size of the employer with 10 or more employees is determined, it is not recalculated, even if the number of employees changes.
- 4. Once an employer is covered by the Act, the employer remains covered regardless of subsequent changes in the number of employees.

RELEVANT SECTIONS IN THE ACT

Subsection 1(1)	Defines employee, establishment.
Subsection 1(4)	Contains the method of calculating the number of employees in Ontario.
Section 3	Defines the size of employer based on the number of employees in order to determine who the <i>Act</i> applies to.
Section 11	Defines which employers must post pay equity plans.
Section 13	Sets out the details of preparing pay equity plans and scheduling pay equity adjustments.
Sections 18–21	Sets out the choices available to employers with 10 to 99 employees regarding posting pay equity plans.
Section 21.7	Specifies when an employer should post a pay equity plan using the proportional value comparison method.
Section 21.10	Sets out the schedule for first proportional value adjustments.
Section 21.19	Specifies when an employer should post a pay equity plan using the proxy comparison method.
Section 21.22	Specifies when an employer should make the first proxy adjustments.

REFERENCES

Pay Equity Implementation Series (Revised) — Guideline #2: Definition of Employer

"Questions and Answers," *Pay Equity Commission Newsletter*, Vol. 1, No. 4, May 1989, p. 6.

FOR MORE INFORMATION WRITE OR CALL:

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Directive no °3 est également disponible en français. Revised May 1994

Guideline #4: Definition of Establishment

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SIGNIFICANCE

The number of establishments an employer has partly determines the number of pay equity plans needed.

A pay equity plan must be prepared for each bargaining unit and one for all non-union employees in each of an employer's establishments.

In pay equity plans based on the job-to-job and proportional value comparison methods, pay equity comparisons are made only among job classes within the same establishment. This means that decisions concerning the definition of establishment will also determine which female and male job classes will be compared for pay equity purposes.

Only public sector employers unable to achieve pay equity for all female job classes using the job-to-job and proportional value comparison methods will need to make comparisons outside their establishment using the proxy comparison method.

EXPLANATION

The Pay Equity Act, R.S.O. 1990, c. P.7, as amended (the Act), states that an establishment is all the employees of an employer who work in a geographic division. A geographic division is a county, territorial district or regional municipality described in the Territorial Division Act. A list of geographic divisions is included at the end of this guideline.

All employees of an employer in a given geographic division must be treated as one establishment.

An employer may decide or, in a union workplace, negotiate with a bargaining agent to expand an establishment to include employees in more than one geographic division. Where there are both union and non-union employees, the employer may choose to expand an establishment for the non-union employees regardless of what is negotiated for employees in the bargaining unit.

Centralized Bargaining

The Act allows two or more employers who normally negotiate a collective agreement together to continue that practice to implement pay equity if the affected bargaining agent or agents agree.

Municipalities in the same geographic division, with the agreement of any affected bargaining agents, may also agree that their employees are one establishment and that they are one employer for pay equity purposes. However, the individual employer is always responsible for implementing the plan and maintaining pay equity for their employees.

Number of Plans Within an Establishment

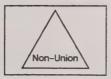
A pay equity plan covering all non-union employees in the establishment must be prepared. One plan must also be negotiated and prepared for each separate bargaining unit in the establishment. As a result, one employer, even with only one establishment, may have several pay equity plans.

In the examples that follow, a rectangle represents an establishment, and a triangle represents a pay equity plan.

Example 1: All employees are located in one geographic division (Wellington County). All employees are non-union.

Requirement: One pay equity plan.

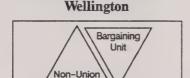
Wellington



One establishment, one plan

Example 2: All employees are located in one geographic division (Wellington County) with one bargaining unit and a group of non-union employees.

Requirement: Two pay equity plans: one for the bargaining unit and one for the group of non-union employees.



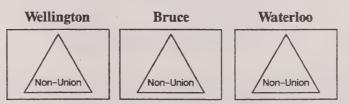
One establishment, two plans

Example 3: Employees are located in three different geographic divisions (Wellington, Bruce and Waterloo counties), with only non-union employees.

Requirement: There are three choices:

A. Three pay equity plans, one for each establishment, if the employer doesn't want to combine geographic divisions for pay equity purposes.

In this case, female job classes in the Wellington County establishment can only be compared with male job classes in Wellington County.



Three establishments, three plans

B. One pay equity plan, if the employer decides to combine facilities in all three geographic divisions into one establishment.

In this case, female job classes in all three regions can be compared with male job classes in all three regions.

Wellington/Bruce/Waterloo



One establishment, one plan

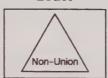
C. Two pay equity plans, if the employer decides to combine operations in any two geographic divisions (e.g. Wellington and Waterloo) into one establishment, while leaving the third (Bruce) separate.

In this example, female job classes in Wellington County can be compared with male job classes in Wellington and Waterloo counties because these are part of the same establishment. These same female job classes are not compared with male job classes in the second establishment, those in Bruce County.

Wellington/Waterloo



Bruce



Two establishments, two plans

Example 4: Employees are located in two geographic divisions (Renfrew and Hastings counties). One (Renfrew) has only non-union employees. The other (Hastings) has two bargaining units, represented by different bargaining agents, and a group of non-union employees.

Requirement: There are three choices:

A. If the decision is made to keep two separate establishments, then *four* pay equity plans are needed: one covering each group of non-union employees in both establishments and one covering each of the two bargaining units in the second establishment (Hastings).

Non-union female job classes in the Renfrew County establishment, in this case, are only compared to non-union male job classes in the same establishment. Male comparators are not sought from among either the union or non-union male job classes in the Hastings County establishment.

Bargaining

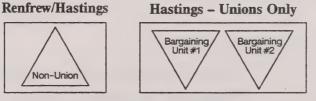
Unit #2

Renfrew Hastings

Non-Union Non-Union

Two establishments, four plans

B. If the decision is made to combine the two establishments but only for the non-union employees, then *three* pay equity plans are needed: one for all non-union employees (Renfrew and Hastings), and one for each of the bargaining units (Hastings).



One establishment (Renfrew/Hastings), one plan plus

One establishment (Hastings), two plans

In this case, non-union female job classes in Renfrew and Hastings counties could potentially be compared with union job classes in Hastings since the establishment for the non-union employees includes *all* employees in Renfrew and Hastings Counties.

On the other hand, female job classes in either of the bargaining units in Hastings County could not be compared with non-union male job classes in Renfrew County since the employer and bargaining agent did not agree to a wider definition of establishment. They could, however, be compared with non-union male job classes in Hastings.

C. If the decision is made to combine the two geographic divisions (Renfrew and Hastings counties) for all employees, then three pay equity plans are still needed: one for all non-union employees and one for each of the bargaining units.

Renfrew/Hastings



One establishment, three plans

Under this option, the establishment for the union job classes would include Renfrew and Hastings rather than Hastings only.

For full information on seeking male comparator job classes for female job classes, see *Guideline #10: Which Job Classes to Compare Using the Job-to-Job Comparison Method*.

RELEVANT SECTIONS IN THE ACT

Subsection 1(1)	Defines establishment and geographic division.
Section 2	Explains the rights of employers to negotiate jointly and the rights of municipalities to combine into one employer.
Subsection 14(1)	Defines the number of pay equity plans needed in an establishment where a bargaining agent exists.
Subsection 14(3)	States that the employer and bargaining agent may agree that establishment includes two or more geographic divisions.
Subsection 15(2)	States that the employer may decide, where employees are not represented by a bargaining agent, that establishment includes two or more geographic divisions.

REFERENCES

Pay Equity Implementation Series (Revised) — Guideline #2: Definition of Employer

Pay Equity Implementation Series (Revised) — Guideline #10: Which Job Classes to Compare

Territorial Division Act

FOR MORE INFORMATION WRITE OR CALL:

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Toronto area (416) 481-3314



Directive no °4 est également disponible en français. Revised May 1994

APPENDIX - TERRITORIAL DIVISIONS

Territorial Divisions in the Territorial Division Act, R.S.O 1990, c.T.5:

United Counties

Stormont, Dundas and Glengarry Leeds and Grenville Prescott and Russell

Counties

Brant	Bruce	Dufferin
Elgin	Essex	Frontenac
Grey	Haliburton	Hastings
Huron	Kent	Lambton
Lanark	Lennox and Addington	Middlesex
Northumberland	Oxford	Perth
Peterborough	Prince Edward	Renfrew
Simcoe	Victoria	Wellington

Municipality

Metropolitan Toronto

Regional Municipalities

Durham	Haldimand-Norfolk	Halton
Hamilton-Wentworth	Ottawa-Carleton	Niagara
Peel	Waterloo	York

Territorial Districts

Algoma	Cochrane	Kenora
Manitoulin	Muskoka	Nipissing
Parry Sound	Rainy River	Sudbury*
Thunder Bay	Timiskaming	·

^{*} The Territorial District of Sudbury and the Regional Municipality of Sudbury are considered one geographic division for pay equity purposes.

Guideline #5: Determining Job Class



PAY EQUITY IMPLEMENTATION SERIES (REVISED)

The Pay Equity Implementation Series is designed to help in the self-managed process — or where bargaining agents are involved, the negotiated process — of achieving pay equity. The series is meant for employers, employees and bargaining agents and is published in a sequence that generally reflects the order in which questions arise in the process of developing a pay equity plan.

SIGNIFICANCE

The Pay Equity Act, R.S.O. 1990, c. P.7, as amended (the Act), requires that female job classes be evaluated and compared to male job classes on the basis of skill, effort, responsibility and working conditions. Female job classes should be paid the same as male job classes if their value is about the same.

EXPLANATION

Positions are combined into job classes, where possible, for pay equity purposes. A job class may include only one position or it may include many positions. The gender of employees is not considered when deciding or, in union workplaces, negotiating job class.

A job class is defined as one or more positions which:

- ▶ have similar duties and responsibilities
- require similar qualifications
- ▶ are filled by similar recruiting procedures and
- ▶ have the same compensation schedule, salary grade or range of salary rates

Exclusions

The positions of employees working only on a casual basis may be excluded from the pay equity process. Casual means:

- ▶ the work is performed for less than one-third of the time that applies to similar full-time work or
- ▶ the work is not performed on a seasonal basis in the same position or
- ▶ the work is not performed on a regular or continuing basis

Tests for Determining Job Class

1. Similar duties and responsibilities

First, all the positions in the job class must have similar duties and responsibilities. The term similar is used, instead of the term identical or the same. This broad definition may enable several positions to be included in a particular job class, which may reduce the number of comparisons that need to be made. If only positions that are virtually identical are included in a job class, the number of job classes requiring evaluation would be significantly larger.

A job class can be made up of one position that is unique in the organization.

2. Similar qualifications

All the positions in the same job class must have similar qualifications. The qualifications considered should be those currently needed to do the job, not those qualifications which an employee may happen to have or which are merely desirable.

It is important to be consistent in defining similar in terms of basic experience, education and other qualifications.

To decide whether the qualifications of positions are similar, consider both the nature and the level of the qualifications. The qualifications should be similar in terms of the type of work, for example, teaching, clerical work, engineering and child care. They should also be similar in terms of level, for example, community-college diploma or equivalent, and three-year apprenticeship or equivalent.

Similar qualifications does not mean *identical* qualifications; similar means ones that are almost the same. For example, in considering the qualification of experience, a period of experience within a range of time, in months or years, could be viewed as similar.

3. Similar recruiting procedures

Recruiting procedures are often associated with qualifications. The qualifications sought affect the *site* where employees are recruited, for example, union hiring hall or college campus.

The *scope* of recruiting does not affect the determination of job class. For example, some job classes are recruited locally, while others are recruited provincially or even nationally. The regions may differ but the qualifications stay the same.

Usually, the kind of recruiting — internal or external, newspaper or radio ads — is not important when determining job class.

4. Same compensation schedule, salary grade or range of salary rates

If the other tests are met, positions can be grouped into the same job class if they have the same:

- compensation schedule or
- salary grade or
- range of salary rates

To belong to the same job class, positions must also have equal access to the same benefits package. The *Act* defines compensation as all payments and benefits.

Common Compensation Terms

It is useful to consider the accepted definitions for some common compensation terms:

► Compensation schedules are tables that list grades of jobs and their salary rates or ranges of salary rates. For example:

Ranges of Salary Rates

	Start	Six Months	One Year
Salary Grade 01	\$8.00	\$8.50	\$9.00
Salary Grade 02	8.25	8.75	9.25
Salary Grade 03	8.55	9.05	9.55

▶ Salary grade is the term used to apply to a grouping of job classes to be paid the same or similar rates of pay. In the example above, all employees working in job classes assigned to salary grade 01 will be paid between \$8.00 and \$9.00 depending on their length of service.

Some bargaining agents and employers may use terms such as job class or job category or pay grade to mean salary grade as defined here. However, the term job class, the subject of this guideline, has a specific meaning under the *Act*.

➤ Salary rate or range of salary rates means the amount of money
— in hourly, weekly, monthly or annual terms — assigned to a
grade. A single rate refers to one amount paid for a grade. A
range of salary rates, or salary range, is marked by a minimum
and maximum salary as shown in the example on the previous
page. The pay of incumbents may vary between the two salary
points usually depending on merit, seniority or length of service,
or a combination of the two.

Full-Time and Part-Time Work

In many cases, part-time employees do not receive the same benefits as their full-time counterparts and, as a result, would have their positions in a separate job class. Positions in which employees work full-time and part-time would belong to the same job class if they have the same compensation schedule, salary grade or range of salary rates, and meet the other tests for job class.

When determining job class, consider equal pay for equal work requirements of the *Employment Standards Act*.

RELEVANT SECTIONS IN THE ACT

Subsection 1(1)	Defines job class, states that students working on vacations are not employees under the Act.
Subsection 1(6)	States that a job class may consist of only one position.
Subsection 1(7)	States that a position cannot be assigned to a job class different than that of other similar positions only because the needs of its incumbent have been accommodated to comply with the <i>Human Rights Code</i> , 1987.
Subsection 4(2)	Defines how systemic discrimination in compensation is identified.
Subsection 6(1)	Defines when pay equity is achieved under the job-to-job comparison method.
Subsection 8(3)	States that a position which provides casual employment may be excluded from pay equity.
Subsection 8(4)	Defines casual.

REFERENCES

Pay Equity Implementation Series (Revised) — Guideline #6: Using the "Group of Jobs" Approach

Pay Equity Implementation Series (Revised) — Guideline #7: Determining the Gender Predominance of Job Classes

Pay Equity Implementation Series (Revised) — Guideline #10: Which Job Classes to Compare

Wentworth County Board of Education (1990), 1 P.E.R. 132 Gloucester (No. 2) (1991), 2 P.E.R. 208

Glengarry Memorial Hospital (No. 2) (1992), 3 P.E.R. 34

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Directive no °5 est également disponible en français. Revised May 1994

Guideline #6: Using the "Group of Jobs" Approach

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SIGNIFICANCE

A "group of jobs" is a series of related female job classes that can be treated as one female job class when being evaluated and compared for pay equity purposes.

By using this approach, the number of female job classes that need to be evaluated and compared is reduced. This approach does not affect the pay differences in dollars that existed among the job classes in the group before doing pay equity.

Different adjustments may result for some female job classes that are evaluated using a group-of-jobs approach instead of individually compared when using the job-to-job comparison method.

EXPLANATION

A group of jobs is a series of job classes in which:

- ▶ the nature of the work performed is related
- ▶ the job classes represent successive levels of work in terms of skill, effort, responsibility and working conditions

Basically, a group of jobs is an *already established* progression of job classes in the workplace involving similar kinds of tasks and duties performed at different levels of skill, effort, responsibility and working conditions.

For example:

Clerk or Assembler I

Senior Clerk Assembler II

Clerk Typist Assembler III

Intermediate Clerk Typist

Senior Clerk Typist

Related work may refer to work in the same field, in the same work unit, at successive steps in an operation, etc. Typically, employees may progress from one job class in a series to the next over time.

Job classes that are arranged in a group of jobs can be treated as one female job class when:

- ▶ 60% or more of the employees in the *group* are female, even though some of the job classes within it are male or gender neutral or
- ▶ an employer and a bargaining agent agree or
- ▶ it is ordered by a review officer or decided by the Pay Equity Hearings Tribunal

The group-of-jobs approach is applied as follows:

- 1. The female job class in the group that has the greatest number of employees is the representative job class.
- 2. The selected pay equity comparison method is applied, using that representative job class.
- 3. The resulting pay equity adjustments, if any, are applied to all the positions in all the job classes in the group as though they were all in one female job class.

For example, if each of the four female job classes in the list that follows were evaluated separately and if a male comparator job class were sought for each, they might receive pay equity adjustments quite different from each other. The existing relationships among their job rates would then be upset or the order of the job classes in terms of job rate might change.

Four Job Classes Before Pay Equity

Job Class	Number of Employees	Pre-Pay Equity Job Rate	Difference
Typist	3 .	\$12.08/hr	
Stenographer	5	12.68/hr	+0.60
Secretary	8	13.68/hr	+1.00
Senior Secretar	y 4	15.43/hr	+1.75

In treating this series of job classes as a group of jobs, the job class of secretary is chosen to represent the whole group because it has the greatest number of employees.

Assume that the secretary job class with its job rate of \$13.68 per hour found a male comparator job class with a job rate of \$13.82. The required pay equity adjustment would be \$0.14 for all the job classes in the group. The job rates for the four job classes after achieving pay equity would be as follows:

Four Job Classes Before Pay Equity

Job Class	Number of Employees	Pay Equity Adjustment	Pre-Pay Equity Job Rate	Difference
Typist	3	\$0.14	\$12.22/hr	
Stenographer	5	0.14	12.82/hr	+0.60
Secretary	8	0.14	13.82.hr	+1.00
Senior Secretar	y 4	0.14	15.57/hr	+ 1.75

Note that the same pay equity adjustments in dollar terms must be given to all positions in all the job classes in the group of jobs.

RELEVANT SECTIONS IN THE ACT

Subsections 6(6)–(10)	Defines the group-of-jobs approach and how it may be applied.
Subsection 21.3(5)	States that the group-of-jobs approach may be used when applying the proportional value comparison method.
Subsection 21.15(6)	Permits the group-of-jobs approach to be used when applying the proxy comparison method.

REFERENCES

Pay Equity Implementation Series (Revised) — Guideline #5: Determining Job Class

Pay Equity Implementation Series (Revised) — Guideline #7: Determining the Gender Predominance of Job Classes

Pay Equity Implementation Series (Revised) — Guideline #9: Gender Neutral Job Comparison

Pay Equity Implementation Series (Revised) — Guideline #11: Determining Job Rate

Pay Equity Implementation Series (Revised) — Guideline #13: Pay Equity Adjustments

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Guideline #7: Determining the Gender Predominance of Job Classes

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SIGNIFICANCE

The Pay Equity Act, R.S.O. 1990, c. P.7, as amended (the Act), requires that female job classes be evaluated and compared to male job classes on the basis of skill, effort, responsibility and working conditions. If female job classes are found to be equal or comparable in value to their male comparators, their compensation must be compared to see whether pay equity exists.

Determining the gender predominance of job classes — whether they will be treated as female, male or gender neutral — is an essential step in implementing pay equity since only female job classes are eligible for adjustments under the Act.

Any time the gender of a job class is in doubt or not clear, even when applying the principles below, consider the purpose and intent of the *Act*: redressing systemic gender discrimination in compensation for work done by employees in female job classes.

EXPLANATION

Gender of Job Classes Based on Percentage

Decisions about the gender of job classes are usually based on the percentage of female and male employees currently in them.

Usually if a job class is filled by:

- ▶ 60% or more female employees, it is a female job class
- ▶ 70% or more male employees, it is a male job class
- ▶ about half and half, it is a gender neutral job class

However, the Act states that two additional principles should be considered: gender stereotyping and historical incumbency.

Gender of Job Classes Based on Gender Stereotypes

Certain job classes, for example, nurse or secretary, are nearly always performed by women. Others, for example, engineer or machinist, have nearly always been performed by men. Such job classes are said to be gender stereotyped.

Gender stereotyping goes beyond the reality of a particular situation or establishment. It is generally observed in all workplaces across Ontario that deal with the type of work in question.

When gender stereotyping is used for pay equity purposes, it is necessary to consider job classes to be female or male depending on how they are stereotyped, regardless of how many women and men do the work in a particular establishment.

For information about the distribution of women and men into gender stereotyped occupations, see the reference section of this guideline.

Gender of Job Classes Based on Historical Incumbency

A change in the mix of employees may appear to change the gender of the job class, particularly where a job class includes a small number of positions. If the gender of incumbents in a job class has changed recently, historical incumbency should be considered.

Unlike gender stereotyping, historical incumbency is examined within a particular establishment. It involves observing the pattern of incumbency by gender in the establishment over a period of time.

There are no rules regarding how much time needs to pass after a change in the gender of a job class before historical incumbency no longer matters. The issue should be decided or negotiated with the purpose of the *Act* in mind.

For example, the time could be determined based on the turnover in a particular job. If there is not much turnover, look further back to see if there is a pattern. It may also be relevant to consider whether the relative level of compensation for a job class in an establishment was determined when the job class was female or male dominated.

RELEVANT SECTIONS IN THE ACT

Subsection 1(1) Defines job class, female job class, male job

class.

Subsection 1(5) Requires considering gender stereotyping and

historical incumbency when determining the

gender of job classes.

REFERENCES

Pay Equity Implementation Series (Revised) — Guideline #5: Determining Job Class

Pay Equity Implementation Series (Revised) — Guideline #10: Which Job Classes to Compare

Articles and Resources

Armstrong, Pat and Armstrong, Hugh. *The Double Ghetto: Canadian Women and Their Segregated Work*. Rev. ed. Toronto, Ont.: McClelland & Stewart, 1984.

Boulet, Jac-André and Lavalleé, Laval. The Changing Economic Status of Women. Ottawa, Ont.: Economic Council of Canada, 1984.

Reskin, Barbara. Sex Segregation in the Workplace: Trends, Explanations, Remedies. Washington, D.C.: National Academy Press, 1984.

Reskin, Barbara and Hartmann, Heidi. Women's Work, Men's Work: Segregation on the Job. Washington, D.C.: National Academy Press, 1986.

Reskin, Barbara and Roos, Patricia. Job Queues, Gender Queues: Explaining Women's Inroads into Male Occupations. Philadelphia, Penn.: Temple University Press, 1990.

Shea, Catherine. "Changes in Women's Occupations," Canadian Social Trends, No. 18, Autumn 1990, p. 21–23.

Statistical Resources

Occupational Trends, 1961–1986. Ottawa, Ont.: Statistics Canada, 1988. (Cat. no. 93–151)

Population: Worked in 1980 – Employment Income by Occupation: Canada, Provinces. Ottawa, Ont.: Statistics Canada, 1984. (Cat. no. 92–930)

Women in the Workplace: Selected Data. Ottawa, Ont.: Statistics Canada, 1987. (Cat. no. 71-534)

Statistics Canada is the major source of statistical data on occupational segregation in Canada. The census publications in particular are very useful.

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Guideline #8: Disclosing Information



PAY EQUITY IMPLEMENTATION SERIES (REVISED)

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SIGNIFICANCE

Employers and bargaining agents must negotiate and reach agreement on many issues when implementing pay equity. These include the definition of establishment, the gender predominance of job classes and the gender neutral comparison method.

For effective negotiations, the parties involved must share certain kinds of information.

For non-union groups, disclosure of information is also important. Employers may want to involve employees in developing their pay equity plans. If they do so, the employees involved will need sufficient information to participate effectively in the process.

Completed and posted pay equity plans must contain sufficient information and be written clearly so that employees can make informed judgements about the plans. The plan should be posted in a prominent place, where it can be read by all affected employees.

EXPLANATION

Employees Represented by a Bargaining Agent

The Pay Equity Act, R.S.O. 1990, c. P.7, as amended (the Act), requires that a pay equity plan be prepared for each bargaining unit in an establishment and that the employer and bargaining agent "negotiate in good faith and endeavour to agree" on the details in the plan.

The Act specifies the following items must be negotiated:

- ▶ the gender neutral comparison system
- ▶ the pay equity plan
- whether the establishment includes two or more geographic divisions
- whether job classes are female or male

In the *Cybermedix* case, the Pay Equity Hearings Tribunal ordered that any information related to implementing or maintaining pay equity must be disclosed to the bargaining agent. This may include information about job classes outside the bargaining unit.

The Tribunal made the following statements in the *Cybermedix* decision about the importance of disclosure:

For the parties to negotiate in good faith and endeavour to agree on the job comparison system and the pay equity plan, there must be disclosure of relevant pay equity information. Disclosure is required to foster rational and informed discussions and to enable the parties to move towards settlement. The parties must have sufficient information to intelligently appraise the other's proposals, to formulate their own positions in bargaining pay equity, and to fairly represent their members. The duty to disclose information for the purposes of bargaining collective agreements has long been established . . . (paragraph 20)

In discussing the limits that may exist on information to be disclosed, the Tribunal said:

The information requested must be necessary to negotiate pay equity. The information must be rationally related to an issue or issues in pay equity bargaining. The information may be necessary to test the quality or impact of a decision in the pay equity bargaining process. (paragraph 22)

On the issue of disclosing information sequentially depending on the particular stage negotiations reached, the Tribunal said:

But, the sequential process is not the only way to bargain pay equity. Neither party can force the timetable of bargaining by refusing to disclose on outstanding issues. The timing of disclosure may depend upon the type of pay equity bargaining in which the parties wish to engage. Disclosure must be made when parties cannot agree on an issue without the information requested. Both parties are entitled to sufficient information to make informed choices at all stages of the process. (paragraph 24)

With both the job-to-job and proportional value comparison methods, if suitable male comparator job classes cannot be found within a bargaining unit, the search for potential male comparators must extend throughout the establishment.

In discussing disclosure of information about male job classes outside the bargaining unit, the Tribunal commented:

... the union is entitled to sufficient information necessary to negotiate the boundaries of job classes both inside and outside the bargaining unit. . . . Therefore, in order to define job class, and to identify and evaluate male job comparators, the [bargaining agent] is entitled to the compensation schedule, salary grade, or range of salary rates for all employees outside the bargaining unit. This information is also necessary to allow the Applicant to consider and possibly to propose a . . . system of job comparison for this workplace. (paragraph 29)

In the *Cybermedix* case, the Tribunal ordered disclosure of job titles, gender composition, compensation schedules, salary grades or range of salary rates, and existing job descriptions for all positions outside the bargaining unit. It declined to order disclosure of the names of the employees in these positions.

Tribunal decisions are made on a case-by-case basis. The facts in other cases can lead to different decisions.

Non-Union Employees

The Act does not require that non-union employees be involved in preparing pay equity plans that affect them. It does, however, require that pay equity plans be posted (private sector employers with 10 to 99 employees may have chosen not to post a plan), and that copies of posted plans be given to employees on request.

The Act also gives employees the right to comment to the employer and to object to the Pay Equity Commission about the contents of their posted plan.

To exercise these rights, non-union employees must have access to information which will allow them to understand how their job class was treated in the plan and to determine whether they have a valid objection.

When a review officer investigates an objection filed by a non-union employee or group of employees, the review officer has the right to request or order disclosure of information. This information is often shared with the employee to explain how pay equity was achieved.

When the issue is the subject of a hearing at the Tribunal, the Tribunal can require the disclosure.

Many employers have found that involving non-union employees in developing pay equity plans has a positive effect on work relations and fosters understanding and acceptance of the results.

RELEVANT SECTIONS IN THE ACT

Subsection 1(1)	Defines bargaining agent, collective agreement.
Subsection 1(2)	Specifies the standards to be met when posting documents.
Subsection 1(3)	Specifies who has a right to copies of the posted documents.
Section 2	Defines the right of the bargaining agent to negotiate the terms of centralized pay equity agreements.

Subsection 6(4) Describes the requirement to make separate job

comparisons for job classes inside a bargaining unit and for job classes outside a bargaining

unit.

Subsection 6(8) Defines the right of the bargaining agent to

negotiate the group-of-jobs approach.

Section 7 Defines the obligation of the bargaining agent in

establishing and maintaining pay equity.

Subsections 13(1)–(2) Lists the required contents of pay equity plans.

Subsections 13.1(1)–(2) Specifies the rights and obligations of the

bargaining agent in negotiating a new pay equity

plan with the sale of a business.

Section 14 Specifies the rights and obligations of the

bargaining agent in negotiating the amendment

of the pay equity plan.

Section 15 Specifies the rights and obligations of employers

and non-union employees in preparing, posting,

commenting on and objecting to pay equity

plans.

REFERENCES

Pay Equity Implementation Series (Revised) — Guideline #3: Calculating the Number of Employees in the Private Sector

Pay Equity Implementation Series (Revised) — Guideline #7: Determining the Gender Predominance of Job Classes

Pay Equity Implementation Series (Revised) — Guideline #9: Gender Neutral Job Comparison

Pay Equity Implementation Series (Revised) — Guideline #10: Which Job Classes to Compare

Pay Equity Implementation Series (Revised) — Guideline #14: Pay Equity Plans

Pay Equity Implementation Series (Revised) — Guideline #15: Dispute Resolution I – Review Services

Pay Equity Implementation Series (Revised) — Guideline #16: Dispute Resolution II – Pay Equity Hearings Tribunal

Cybermedix Health Services Ltd. (1989), 1 P.E.R. 41
Riverdale Hospital (No. 1) (1990), 2 P.E.R. 1
Kingston and Frontenac C.A.S. (1990), 2 P.E.R. 31
Gloucester (No. 1) (1991), 2 P.E.R. 52
Haldimand–Norfolk (No. 6) (1991), 2 P.E.R. 105
Liquor Control Board of Ontario (1991), 2 P.E.R. 193
Ontario Northland (1992), 3 P.E.R. 166
St. Joseph's Villa (1993), 4 P.E.R. 33

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Guideline #9: Gender Neutral Job Comparison

PAY EQUITY IMPLEMENTATION SERIES (REVISED)

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SIGNIFICANCE

A gender neutral comparison system determines the value of job classes and, as a result, it is crucial in achieving pay equity.

With the job-to-job comparison method, pay equity is achieved when the job rate — the total of payments and benefits — for a female job class is at least equal to the job rate for a male job class of equal or comparable value, or is equal to the job rate for a male job class of lower value but is higher paid.

With the proportional value comparison method, a female job class achieves pay equity when the relationship of its job rate to its job value is the same as that of a representative group of male job classes.

EXPLANATION

The Pay Equity Act, R.S.O. 1990, c. P.7, as amended (the Act) requires that the work done by female job classes and male job classes be evaluated on the factors of skill, effort, responsibility and working conditions.

The Act also requires employers preparing pay equity plans to use a gender neutral comparison system (GNCS) to determine the value of the work performed. But the Act does not specify details of the system to be used, nor does it define gender neutrality.

In the *Haldimand-Norfolk* case, in which the gender neutrality of the comparison system was in question, the Pay Equity Hearings Tribunal determined a gender neutral comparison system (GNCS) should be made up of four components:

- A. The accurate collection of job class information.
- B. The mechanism or tool to determine the value of job classes.
- C. The application of the mechanism or tool to determine the value of the work.
- D. The comparison of job classes.

Comparison of job class was not an issue in *Haldimand-Norfolk* and, as a result, the Tribunal did not examine it.

Steps A to C above have traditionally been called job evaluation. The Commission has published sample job comparison systems for bargaining agents and employers to use as adaptable models. The Commission does not guarantee that any particular system will comply with the *Act*. The system used must be properly *applied* to ensure compliance.

The *Haldimand–Norfolk* case was the first legal discussion of gender neutral job comparison by the Tribunal. The decision emphasized that the work done in each workplace must be specifically addressed in the GNCS and that generalized systems may not be able to do that.

The Tribunal decision placed great emphasis on the accuracy and completeness of job information. It also set a high standard for removing gender bias from the definition and weighting of factors, and from the process of applying the system.

A. The accurate collection of job class information

The Tribunal identified four questions relating to the accurate collection of job class information that should be considered when implementing pay equity:

- 1. What is the range of work performed in the establishment?
- 2. Does the system make work, particularly women's work, visible in the workplace?
- 3. Does the information being collected accurately capture the skill, effort and responsibility normally required in the work and the conditions under which it is normally performed for both the female job classes in the plan and the male job classes to be used for comparison?
- 4. Is the information collected accurately and consistently?

B. The mechanism or tool to determine the value of job classes

The Tribunal established four tests for assessing the gender neutral comparison system. (The system in this case was a point-factor system.)

- 1. Can the tool (GNCS) determine the value of the work performed using the required factors of skill, effort, responsibility and working conditions?
- 2. Is the choice of subfactors free of gender bias?
- 3. Are the levels or their equivalent, if used, free of gender bias?
- 4. Is the composite of skill, effort, responsibility and working conditions decided in such a way that it gives value to all four factors and is the point weighting free of gender bias?

C. Applying the mechanism or tool to determine the value of the work

In many cases, a committee is used to evaluate job classes. The Pay Equity Office highly recommends this approach, although it is not required by the *Act*. The Tribunal expects the standards of gender neutrality to apply whether a committee or an individual applies a GNCS.

The Tribunal used five tests for evaluating this step:

- 1. Is the valuing tool applied consistently without regard to the gender of the job class?
- 2. If a committee is used to evaluate job classes, is the committee representative, balancing the interests of the parties with duties and obligations under the *Act*?
- 3. If a committee is part of the system, is it sufficiently knowledgeable to allow the parties to meet their obligations?
- 4. Is the decision-making done in a manner free of gender bias?
- 5. Did the mechanism identify systemic wage discrimination?

Gender-Specific Language

There are often language differences in the way jobs are described. Men tend to fully describe and women tend to underdescribe their jobs.

Make sure that job class information is consistent and thorough in measuring the content of each job class and that it captures and makes visible women's work.

Selecting and Defining Subfactors

Under the Act, any comparison method used to do pay equity must measure the four factors of skill, effort, responsibility and working conditions. These factors are often divided into subfactors. For example, responsibility for machines and responsibility for people might be two subfactors of responsibility. Different subfactors may be chosen according to what characteristics are valued in that organization.

The questionnaires used to collect job information or the existing job descriptions should reflect the choice of these subfactors.

The same stereotyped notions that can affect the descriptions of so-called women's jobs can also affect the definitions of subfactors. For example:

- ► The manual skills of a machinery repair person may be considered but the dexterity skills of a typist may be overlooked.
- ▶ The physical effort required for the occasional lifting of heavy objects may be taken into account, while the more frequent lifting of lighter objects may not.
- ▶ Responsibility for spending authority and budgetary control may be considered, but responsibility for handling customer complaints may not.
- ➤ Working conditions such as working with noisy machinery might be valued while the stressful conditions caused by caring for mentally ill persons may be overlooked.

To avoid these kinds of inequities, make sure that subfactors which tend to favour female job classes are included as well as those which tend to favour male job classes. When possible, subfactors should be defined in neutral terms that apply to both "women's jobs" and "men's jobs" and in broad enough terms to include the full range of tasks and duties found in *all* job classes within the establishment.

Weighting Factors and Subfactors

Some comparison systems allow for factors and subfactors to be weighted to reflect their relative importance to the organization. Weighting involves making judgements about how the organization values different aspects of job content. This is acceptable if the weightings are free of gender bias.

The factors with the heaviest and the lightest weightings should be carefully examined to ensure that these weights do not unreasonably favour one gender over the other.

If male job classes consistently score higher on the factors with the heaviest weightings and female job classes consistently score higher on the factors with the lightest weightings, this might indicate gender bias in the system.

Applying the Gender Neutral Comparison System

The Act does not require that job comparison committees be used in the pay equity process. However, there are significant advantages to the committee approach. A committee may be able to draw on a wider knowledge of the various job classes in the establishment than a single evaluator. In addition, the results of a committee process may be seen to be fairer and, consequently, more acceptable to employees.

A committee should be representative. Its members should be female and male employees representing varying ages, years of experience, occupations and organizational levels. Where a bargaining unit plan is being negotiated, the committee would consist of both union and management representatives. The committee generally has greater credibility if its members are well respected within the groups of employees they represent.

Committee members should understand pay equity issues and be aware of how factors like gender stereotyping can influence job class analysis and decision-making. They should be trained to evaluate in a gender neutral way. They should also reach agreement on the chosen subfactors and their definitions, and how they are to be applied before the evaluation process begins.

Care should be taken to ensure that female and male job classes are evaluated as objectively as possible. For consistency, it might be advisable to rate all job classes on one subfactor at a time, instead of rating job classes one after the other.

RELEVANT SECTIONS IN THE ACT

Subsection 4(1)	States that the purpose of the <i>Act</i> is to redress systemic discrimination in compensation for work done by employees in female job classes.
Subsection 4(2)	States that systemic gender discrimination will be identified by comparing the value of work done and the compensation received by female job classes with male job classes in an establishment.
Subsection 5(1)	States that the value of work is the composite of skill, effort, responsibility and working conditions.
Subsection 5(2)	States that the accommodation of disabilities will not affect the value of work.
Subsections 6(1) and 6(5)	Sets out how pay equity is achieved using the job-to-job comparison method.
Subsection 6(9)	Specifies which job class to evaluate in a group of jobs.
Section 12	Requires employers who will be posting pay equity plans to use a gender neutral comparison system (GNCS) to determine whether pay equity exists for each female job class.
Subsection 13(2)(a)	Specifies that pay equity plans must describe the gender neutral comparison system (GNCS) used to develop the plan.
Subsection 14(2)(a)	Specifies that employers and bargaining agents must negotiate and try to agree on the gender neutral comparison system (GNCS).
Subsection 21.3(4)	Requires that a gender neutral comparison system (GNCS) be used for comparisons when applying the proportional value comparison method.
Subsection 21.15(3)	Requires that a gender neutral comparison system (GNCS) be used for comparisons applying the proxy comparison method.

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Pay Equity Implementation Series (Revised) — Guideline #7: Determining the Gender Predominance of Job Classes

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Guideline #10: Which Job Classes to Compare

PAY EQUITY IMPLEMENTATION SERIES (REVISED)

The Pay Equity Implementation Series is designed to help in the self-managed process — or where bargaining agents are involved, the negotiated process — of achieving pay equity. The series is meant for employers, employees and bargaining agents and is published in a sequence that generally reflects the order in which questions arise in the process of developing a pay equity plan.

SIGNIFICANCE

The Pay Equity Act, R.S.O. 1990, c. P.7, as amended (the Act), requires that the value of the work done and the compensation received by female job classes be compared with male job classes in the same establishment to see whether pay equity exists.

Guideline #9 explains how to determine the value of work performed; Guidelines #11 and #12 show how to make comparisons in compensation.

This guideline looks at how to find the appropriate male job class or classes to compare to a female job class using the job-to-job comparison method.

The Commission publication Step-by-Step to Pay Equity: Using the Proportional Value Comparison Method details how to find a representative group of male job classes when applying the proportional value comparison method.

EXPLANATION

There are three methods which can be used under certain circumstances to make pay equity comparisons:

- ▶ the job-to-job comparison method
- ▶ the proportional value comparison method
- ▶ the proxy comparison method

The job-to-job comparison method is applied first in most cases. If a female job class in an establishment cannot achieve pay equity using job-to-job comparisons, then the proportional value comparison method must be applied. Only in limited circumstances can the proportional value comparison method be applied alone.

If pay equity cannot be achieved by either job-to-job or proportional value comparisons, the employer must notify the Pay Equity Commission.

Only broader public sector employers who cannot achieve pay equity for all female job classes with either the job-to-job or proportional value comparisons may be ordered to apply the proxy comparison method. If ordered, these broader public sector employers will be given information on applying the method.

Before comparisons can be made by any method, three steps must be completed:

- 1. Determine the number of pay equity plans required in the establishment: one for each bargaining unit and one for all non-bargaining unit job classes (see Guideline #4: Definition of Establishment).
- 2. Determine which job classes are female dominated and which are male dominated (see *Guideline #7: Determining the Gender Predominance of Job Classes*).
- 3. Using a gender neutral job comparison system, determine the value of all female job classes and a number of male job classes. The descriptions of the methods that follow will explain which male job classes should be evaluated (see Guideline #9: Gender Neutral Job Comparison).

The Job-to-Job Comparison Method

If the value of job classes was determined using a point-factor comparison system, the number of points assigned to the job class determines its value.

If a ranking system was used which did not produce comparison points, then the position of the job class in the rank order represents its value.

The Act stipulates a specific sequence for identifying the appropriate male comparator job class for any particular female job class. One male job class can serve as the comparator for more than one female job class. Where there are potential male comparator job classes in establishments, employers must take the following steps in sequence:

1. Look for a male job class of equal or comparable value among those in the same bargaining unit or among the non-union male job classes. This is what is called the "equal or comparable inside" comparison. If more than one male job class is found to be equal or comparable, the one with the *lowest* job rate is the appropriate comparator. The male job class with the lowest job rate is chosen because differences in pay between the male job classes are not based on gender.

Pay equity is achieved when the job rate for the female job class is at least as great as the lowest job rate of the eligible male comparator.

In this and the following illustrations, F = female job class and M = male job class.

Establishment

F M

Pay Equity Group 1

Pay Equity Group 2

Finding Comparators "Inside"

2. If there is no male job class of equal or comparable value in the same bargaining unit or group of non-union job classes, look for one from among other male job classes in the establishment. In this case, boundaries between one bargaining unit and another, or between a bargaining unit and the group of non-union employees must be crossed to look for a male comparator in the establishment. This is the "equal or comparable outside" comparison. If more than one of equal or comparable value is found, the one with the *lowest* job rate is the appropriate comparator.

For example, if there is an unmatched female job class in a bargaining unit, look for male job classes in the other bargaining units or among the non-union job classes. If the female job class is in the non-union plan, look for male job classes in the bargaining units.

Pay equity is achieved when the job rate for the female job class is at least as great as the lowest job rate of the eligible male comparators.

Establishment

M

M

M

Pay Equity Group 1

Finding Comparators "Outside"

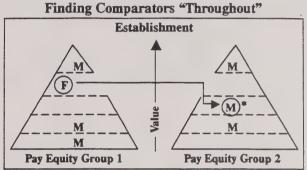
M

M

Pay Equity Group 2

4 =

3. If there is no male job class of equal or comparable value in the establishment, look at all the male job classes throughout the establishment ("lower value, higher paid throughout") that are of lower value, with a higher job rate than the female job class under consideration. If more than one is found, the one with the highest job rate is the appropriate male comparator.



 Assuming this is the highest paid of male job classes of lesser value than the female job class under consideration.

Pay equity in this case is achieved when the job rate for the female job class is at least as great as the highest job rate among the eligible male comparators.

If it is necessary to go outside a group of non-union job classes or outside the bargaining unit to find a male comparator for a female job class, potential male comparator job classes must be evaluated using the same gender neutral comparison system.

When the job-to-job comparison method is used, pay equity is achieved when the job rate for the female job class is at least equal to that of the male comparator job class.

If no male comparator job class can be found for a female job class, then pay equity for this female job class cannot be achieved by job-to-job comparisons and the proportional value comparison method must be applied.

For proportional value, the employer must first attempt to make comparisons using a representative group of male job classes within the bargaining unit or group of non-union male job classes. If this is not possible, a representative group of male job classes in the entire establishment is used.

Equal or Comparable Value

The first two steps in the search for a male comparator job class specify that the male comparator must be of equal or comparable value to the female job class. But what is comparable?

If a point-factor comparison system was used to determine value, value is expressed in terms of evaluation points. In this case, equal or comparable value means having about the same number of points.

In determining which job classes are comparable in value, many employers set out ranges or bands of points in which the value of different job classes are considered comparable. This process is usually called banding.

Banding of Points

The concept of banding is not new. An example of bands of comparability is found in the school system when students are assigned grades. Students who score 90 to 100 points are given a letter grade of "A"; those who score 80–89 receive a "B"; and so on. No distinction is made between, say, a score of 91 and one of 97. Instead, these are defined as comparable and given the same letter grade. The same concepts can be applied using job comparison points and job rates.

There are two approaches to banding: fixed bands (which are the most commonly used) and floating bands.

Fixed Bands

One approach in determining equal or comparable job classes is to list job classes by value, then divide the set of job class values into sections, or bands, with each band being a chosen number of points wide. For example, different job classes evaluated using a particular system may range in value from 110 to 1000 points. One way of banding would be to select a starting point — say, 100 points — and a constant band width — 50 points in this example. Any job classes falling into a particular band of points would be considered to be of equal or comparable value.

Point Band	Range of Points
Ι .	100 to 149
п	150 to 199
m [*]	200 to 249
īV	250 to 299

Because the definition of the bands is not related to the value of any particular job class and because the bands have fixed boundaries, they are called fixed bands. The ones in this example are also of fixed width — they are all 50 points wide.

Using band widths that increase as the point values rise is another approach. For example, some comparison systems have point scales for each factor in which the increments in points get larger as the levels increase (for example, 100, 115, 132, 152, 175, 200, 230). This scale increases by about 15% per step. It would be logical to have point bands that increase by 15% for the totals of evaluation points this system produces. These would still be fixed bands, although they vary in width, because the boundaries between the bands are pre-determined.

Deciding Where to Start Fixed Bands

As with the width of bands, there are no rules where fixed bands should start. Some possibilities are:

- ▶ sufficiently below the job class with the lowest point value to allow for a new job of even lower value
- ▶ the lowest possible point score the system can produce

As long as it is consistent with the intent of the Act, setting a starting point so that band boundaries avoid passing through a cluster of similarly valued job classes can be considered.

Floating Bands

Floating bands are defined as a reference point, plus or minus a certain number of points. In this case, the value of each female job class is a reference point. For example, if a certain female job class has 178 points and the floating band width is 50 points (plus or minus 25 points), then job classes of equal or comparable value will be from 153 points (178 - 25) to 203 points (178 + 25).

Defined as plus or minus some number of points, band widths would be floating but have fixed width. Just as with fixed bands, floating bands can be expressed as plus or minus a percentage of the number of points of the female job class, for example, plus or minus 15%. In this case, the female job class with 178 points would have job classes of equal or comparable value from 151 points (178 x 0.85) to 205 points (178 x 1.15). It is preferable to have floating bands that start at some meaningful or logical point and that follow some consistent pattern.

Consider the Intent of the Act

In deciding or negotiating point bands, keep in mind the intent of the *Act*: to redress gender discrimination in the compensation of employees in female job classes.

One example of a sign of gender bias in the banding of job classes might be where female job classes consistently fall at the top of bands and male job classes at the bottom. This would have the effect of consistently comparing the job rates of female job classes to the job rates of male job classes of lower value. Band boundaries, in this case, might need to be adjusted so that job classes of equal or comparable value are more accurately reflected.

RELEVANT SECTIONS IN THE ACT

Subsection 1(1) Includes the definition of job class.

Section 4 Defines the purpose of the Act and states that

systemic discrimination in compensation will be identified by comparing the value of the work done and the compensation received by female ich classes with male that of ich classes

job classes with male that of job classes.

Subsection 5(1) Specifies that the value of work is measured by

skill, effort, responsibility and working

conditions.

Subsections 6(1)-(5) Details the requirements of the job-to-job

comparison method.

Subsections 6(6)–(10) Describes the group–of–jobs approach when

comparing compensation.

Subsection 8(1) Describes the grounds for permissible

differences in compensation.

Section 12 States the requirement for employers posting pay

equity plans to use a gender neutral comparison system to evaluate job classes and compare compensation to see if pay equity exists.

Subsection 21.1 States that the proportional value requirement

applies to employers who must or who opted to

post pay equity plans.

Section 21.2 Specifies when to use the proportional value

comparison method.

Section 21.3 Explains the proportional value comparison

method.

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Step by Step to Pay Equity: Volume 3 - Using the Proportional Value Comparison Method, Pay Equity Commission, 1993

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Guideline #11: Determining Job Rate



PAY EQUITY IMPLEMENTATION SERIES (REVISED)

The Pay Equity Implementation Series is designed to help in the self-managed process — or where bargaining agents are involved, the negotiated process — of achieving pay equity. The series is meant for employers, employees and bargaining agents and is published in a sequence that generally reflects the order in which questions arise in the process of developing a pay equity plan.

SIGNIFICANCE

Job rate is defined as the highest rate of compensation for a job class. Compensation is defined as all payments and benefits paid to an employee who performs functions which entitle that individual to be paid a fixed amount. When comparing job rates, consider all forms of compensation.

The incumbent of a job class does not affect the job rate for that job class. The job rate may exist even if there is no incumbent. For example, a job class that is temporarily vacant would still have a job rate.

Under the *Pay Equity Act*, R.S.O. 1990, c. P.7, as amended (the *Act*), pay equity is achieved when the job rate for a female job class:

- ▶ is at least the same as the job rate for its male comparator job class using the job-to-job comparison method or
- ▶ bears the same relationship between job value and job rate as that for the representative group of male job classes using the proportional value method. Details on how to apply proportional value are available in the Commission publication Step by Step to Pay Equity: Using the Proportional Value Comparison Method.

Where both job-to-job and proportional value comparisons can be made for a female job class, the pay equity job rate under proportional value cannot be less than the job-to-job pay equity job rate.

EXPLANATION

The Pay Equity Hearings Tribunal in *Ontario Northland* set out three principles for determining job rate:

- 1. The calculations must be as accurate as possible, based on realistic and fair compensation calculations.
- 2. The job rate should be calculated in a manner which is the least disruptive to the collective agreement and compensation practices of the parties.
- 3. All calculations must conform to the purpose and scheme of the Act.

Bringing Job Rates to a Common Standard

Sometimes different time periods are used when dealing with compensation rates of different job classes, even within the same establishment. For example, it is not unusual for production job classes to be paid in terms of dollars per hour, office job classes paid in terms of dollars per week and management job classes paid in terms of dollars per year.

Before comparisons can be made among job rates of job classes where different compensation units are used, the rates must be brought to one common measurement standard.

The most common standard used is dollars per hour. If a longer period than an hour is used to express the value of pay or a benefit, simply divide the longer period by the number of hours worked. For example, if an employee works 40 hours per week and is paid \$29,000 per year, the hourly rate is calculated as follows:

```
number of hours worked per year = 40 \times 52 = 2080
hourly pay = $29,000 \div 2,080 = $13.94
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Do not consider differences in hours of work for benefits that are not time related (e.g. dental plans).

If it is unclear how many hours are worked in a day, move to a longer period, such as a week or year. For example, if daily hours are not clear or vary, and pay is stated by policy or collective agreement in weekly terms, move the value of pay and benefits to a weekly basis. The total weekly hours should be equalized for both the female and male job classes before their compensation can be compared.

Calculating Salaries, Wages and Payments

Calculating job rates for job classes depends on the method the employer used to set the pay for employees in each job class:

1. No formal system for determining pay

If there is no pay administration system in place in an establishment, which means the employer has not set or maintained salary or wage ranges for specific job classes, the maximum rate paid to any incumbent of a job class is considered to be the job rate for that job class.

2. Single rate of pay

In a single rate of pay structure, a rate of pay is specified for a job class and an employee's pay does not vary from that rate for any reason. In this case, the job rate is the single rate of pay.

3. Predefined salary or wage ranges

Many employers maintain a definite salary or wage range with a minimum and a maximum for some or all of their job classes. Some employers have established a system using salary or wage ranges, but have made exceptions over time to the extent that the formal pay ranges are no longer relevant. In these cases, determine the current pay ranges before beginning pay equity.

Pay ranges for different job classes in the same establishment may differ in width and/or number of steps. These differences do not affect the job rate for pay equity purposes, because job rate is the highest rate of compensation for a job class.

The pay of employees may progress through pay ranges based on merit or seniority (or service), or a combination of the two.

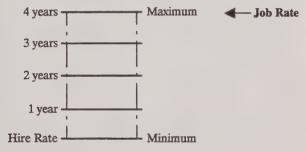
Basic Approaches to Applying Pay Ranges

1. Seniority or step-progression systems

The term service is sometimes used to define an employee's progression through a pay range, while the term seniority may be used to define an employee's ranking, for example, in layoffs. In this guideline, seniority includes both of these concepts.

Under a pure seniority or automatic step-progression system, the pay of all employees will progress from step to step of the pay range at defined time intervals until it reaches the maximum. The job rate is the maximum, as shown here:

Pay Range Using Seniority System



2. Merit systems

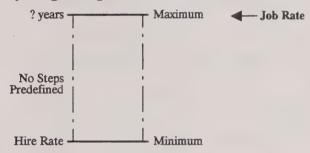
Systems that are commonly referred to as merit systems are not all the same. In this guideline, a merit system will refer to a formal system, such as the case below, where only those employees whose performance is judged exceptional will reach the maximum of their salary range. Employees must be aware of how the system awards merit.

In a merit system, a demonstrable relationship between pay and performance must exist. An employee's progression through the salary range is based on *formal* performance ratings. This means an appraisal system must be in place so employees know in advance what the rules are. Increases cannot be awarded arbitrarily under the pay equity definition of a merit system.

A. Merit to Maximum - Progression Through the Range

Some merit systems work just like the seniority systems described earlier. Given time, virtually all employees will progress to the maximum. In these systems, since pay increases will stop once the pay is at the maximum of the range and since all employees' pay will reach the maximum sooner or later, the job rate is the maximum of the range.

Pay Range Using Merit to Maximum

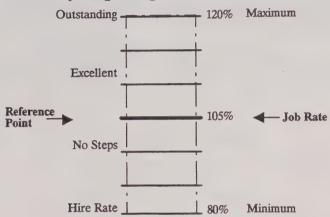


B. Non-Automatic Progress Through the Range

Under some systems, only those judged on the formal system to be performing well above the requirements of the job class will progress to the maximum of the salary range. Employees whose performance is judged to be at the level the job class requires will not progress to the maximum, but to some designated level within the range. The actual job rate for the job class may be a reference point which could be slightly above the rate employees are expected to reach when performing their full range of duties.

A reference point in the range might be determined by looking at what would normally be the highest rate of compensation expected. In this type of pay structure, the reference point is the job rate.

Pay Range Using Merit to Maximum



Other merit systems exist, some of which combine features of the two explained above.

Commissions, Bonuses, Tips and Other Incentive Pay

A number of types of cash payments are based more or less on work performance and are not paid automatically per unit of time worked as with wages or a salary. Included in this category are sales commissions, bonuses, tips and other kinds of incentive pay. Frequently, these payments are paid in addition to a base wage or salary. In some cases, they are the only pay received.

These cash payments would be included in the job rate if a portion or all of the payment is a part of the regular, expected compensation for that job class. These payments would *not* be included if a portion or all of the payment is part of a formal merit compensation plan as defined by the *Act*.

For example, an employer may pay a minimum regular salary to servers in a restaurant with the expectation that tips will provide most of the servers' incomes. In this case, since all of the servers can expect a significant part of their pay to come from tips, at least some portion of the tips will have to be counted into the job rate because at least some portion of the tips is a part of their normal pay. This would be particularly obvious where tips were pooled for distribution.

In another example, an employer may pay a bonus to the salesperson with the highest sales each month. Assume that the standards of the *Act* for a merit compensation plan were met and that it could be shown that the bonus was awarded on sales achieved and not on a rotating basis. Then, in this case, the bonus could likely be omitted from the job rate.

Because of the variety of types of payment plans that could be included in this category, it is impossible to cover every situation in this guideline. When costing these cash payments, use consistent costing procedures to convert them to an hourly or common rate.

Overtime and Shift Work

Premiums for overtime and shift work should not be included in the job rate if overtime and shift work were not reflected in the evaluation of job classes. In a sense, these premiums are directly compensating employees for this aspect of working conditions. However, if these working conditions have been given a value in the gender neutral comparison system (for example, incumbents must work shifts), premiums would be included in the job rate.

Calculating Benefits

While the Act does not specifically define benefits, the term is included in the definition of compensation. That definition describes a benefit as something "paid or provided to or for the benefit of a person who performs functions that entitle the person to be paid a fixed or ascertainable amount." If a benefit's value can be determined, it must be considered for pay equity purposes.

A benefit is a component of a job rate if it contributes to the total compensation of a job class or provides an advantage to that job class over others that do not have the same benefit.

It is the availability of benefits, not their use by individuals, that must be considered. If a benefit is available to employees in a job class who can freely choose whether to use it or not, generally that benefit would be included in the job rate for that job class.

These factors might contribute to differences in benefits available to different job classes:

- 1. Benefits may vary for different employee groups, for example, for union vs. non-union employees, or between different bargaining units.
- 2. Benefits may vary for different positions in the organization, for example, management job classes vs. non-management job classes, or vice presidents and above vs. other management-level job classes.
- Benefits may vary according to employment status or appointment type. Employees working less than full-time, on a contract basis, or on a casual or contingent basis may work in job classes which don't have access to full benefits.

Determining the Value of Benefits

Comparing the compensation of one job class to that of another with different benefits requires determining the value of their respective benefits.

Benefits may differ between two job classes because:

- ▶ One job class has the benefit(s) and the other does not.
- ▶ Both job classes have the benefit(s) but with different levels of payment or advantage.
- ▶ The difference is linked to the difference in pay.

In the first two cases, adjustments are required. In the third case, adjusting the salary or wages portion of the total compensation will adjust the benefit.

Many employers in implementing pay equity have simply granted the additional benefit to the job class that does not have it. If this is done, there is no need to calculate the benefit's value to compare the two job classes. This must be negotiated with the bargaining agent in a union workplace.

In practice, if benefits are basically the same between two job classes, it is unlikely that costing will be necessary. For a benefit to be identical, however, access to it has to be equal.

When using the proportional value comparison method, the benefit levels of the representative group of male job classes and the relevant female job classes must be considered.

In a workplace where many job classes have a number of different benefit packages and a large number of comparisons are needed, the most efficient approach is to calculate and add the value of each benefit package to the salary and wage component of the job rate.

For example, with the proportional value comparison method, this approach might be used with male job classes that have different benefit plans when calculating the male job rate line. In a workplace with few job classes and benefit packages, see whether benefits differ when each comparison is made and simply make adjustments as needed.

If employees have to qualify for a benefit, for example, by having to work for a certain length of time to get increased vacation, they are still considered to have access to that benefit. However, where the qualification is different between two job classes for the same benefit, for example, two years in one job class and five years in another to get the same vacation, an adjustment will have to be made. The Hearings Tribunal decided in the Lady Dunn General Hospital and Regional Municipality of Peel cases that the qualification periods had to be adjusted in such circumstances to make access equal.

When a benefit is based on a percentage of pay, the percentage should be compared to determine relative value. If the percentage is made equal, when the pay rate for the female job class is made equal to the male comparator job class, the value of the benefit will be the same. When a benefit is based on a dollar value, the benefit must be calculated in dollars.

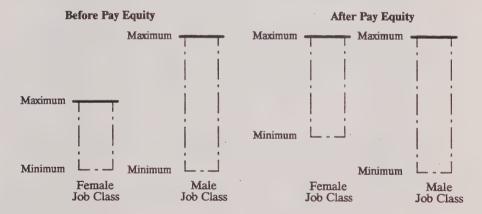
Adjusting Job Rates Using the Job-to-Job Comparison Method

Different methods may be used to set pay for different job classes. The examples below show how job rates may be adjusted to achieve pay equity for different combinations of pay systems. This section assumes that job rates have been adjusted to reflect differences in benefits.

1. Both job classes use a seniority/step-progression system

If both the female job class and male comparator job class use a seniority system, the job rate is the *maximum* of the pay range for each job class. Pay equity is achieved when the maximum of the pay range of the female job class is equal to the maximum of the pay range of the male comparator job class.

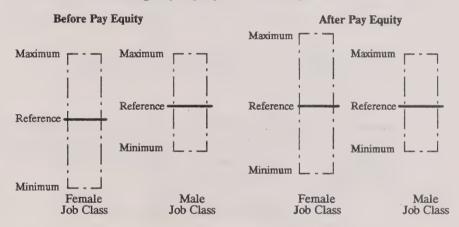
Achieving Pay Equity in Seniority Systems



2. Both job classes use a merit system

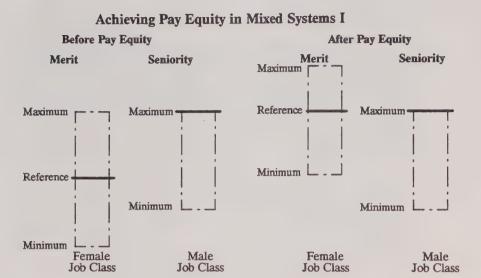
If both the female and male comparator job classes use a merit system, the job rate in both cases is the *reference point* —that point in the pay ranges at which the pay of normal performers will stay. Pay equity is achieved when the reference point for the female job class is at least equal to that of the male comparator job class. Any use of a merit system must follow the requirements of permissible differences defined in subsection 8(1).

Achieving Pay Equity in a Merit System

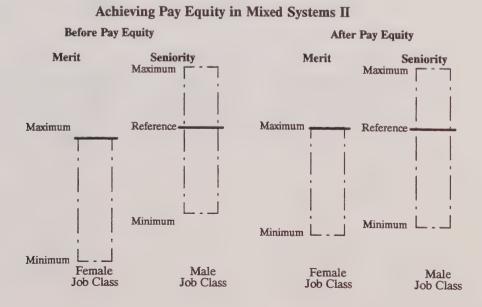


3. Job Classes Use Different Systems

Example A: If the female job class uses a merit system while the male comparator job class uses a seniority system, pay equity is achieved when the reference point of the range of the female job class is at least equal to the maximum of the pay range of the male comparator job class.



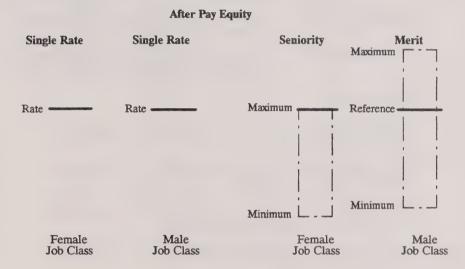
Example B: If the female job class uses a seniority system and the male comparator job class uses a merit system, pay equity is achieved when the maximum salary of the female job class is equal to the reference point of the male comparator's pay range.



4. Matching single rates to single rates of pay, seniority and merit systems

The example below shows how the single rate for a female job class would relate to job rates for male comparator job classes with single rate of pay, seniority and merit systems after pay equity was achieved.

Achieving Pay Equity in Single Rate of Pay Systems



When using proporational value, the job rates of male job classes are used to determine a job rate line. The considerations discussed in this guideline for determining job rate will also apply when applying the proportional value method of comparison.

RELEVANT SECTIONS IN THE ACT

Subsection 1(1) Defines job rate and compensation.

Subsections 6(1)-(5) Defines when pay equity is achieved and which

job rates can be compared under the job-to-job

comparison method.

Subsection 6(9) Defines job rate when using the group-of-jobs

approach.

Subsection 8(1) Defines when differences in job rates are

permissible (seniority, merit, etc.).

Subsection 13(3) States that the job classes with the lowest job

rates must receive the largest adjustments.

REFERENCES

Pay Equity Implementation Series (Revised) — Guideline #5: Determining Job Class

Pay Equity Implementation Series (Revised) — Guideline #10: Which Job Classes to Compare

Pay Equity Implementation Series (Revised) — Guideline #12: Permissible Differences in Compensation

Pay Equity Implementation Series (Revised) — Guideline #13: Pay Equity Adjustments

Lady Dunn General Hospital (1991), 2 P.E.R. 168

Ontario Northland (1992), 3 P.E.R. 166

Regional Municipality of Peel (1992), 3 P.E.R. 191

Step by Step to Pay Equity: Volume 3 — Using the Proportional Value Comparison Method, Pay Equity Commission, 1993

FOR MORE INFORMATION WRITE OR CALL:

Pay Equity Commission 150 Eglinton Avenue East, 5th Floor Toronto, Ontario M4P 1E8

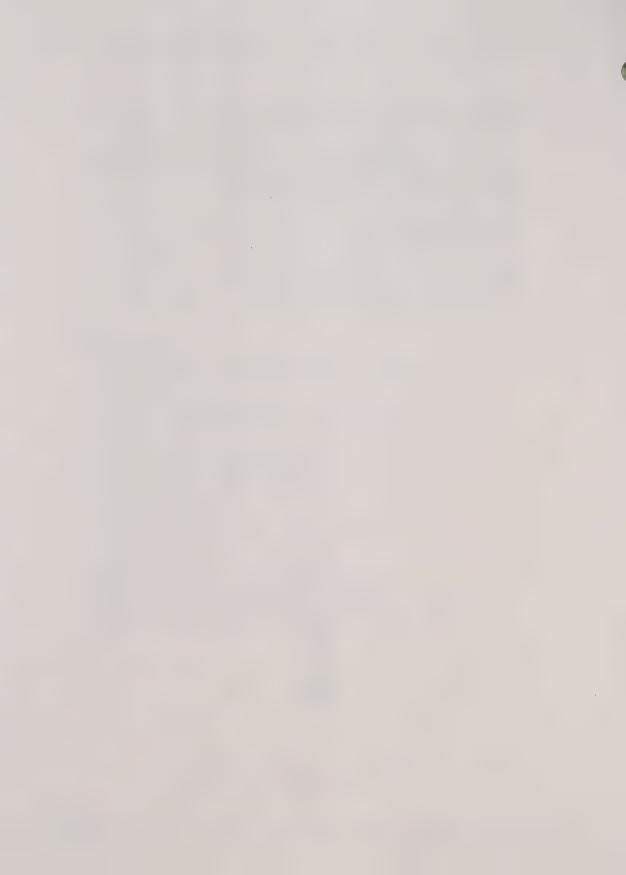
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Guideline #12: Permissible Differences in Compensation

PAY EQUITY IMPLEMENTATION SERIES (REVISED)

The Pay Equity Implementation Series is designed to help in the self-managed process — or where bargaining agents are involved, the negotiated process — of achieving pay equity. The series is meant for employers, employees and bargaining agents and is published in a sequence that generally reflects the order in which questions arise in the process of developing a pay equity plan.

SIGNIFICANCE

Pay equity is achieved for a female job class using the job-to-job comparison method when its job rate is:

- ▶ at least equal to the job rate of a male job class of equal or comparable value *or*
- ▶ equal to that of a male job class of lower value but higher paid

Pay equity is achieved for a female job class using the proportional value comparison method when the relationship of its job rate to its job value is the same as that of a representative group of male job classes. Pay equity is achieved using the proxy comparison method in a similar way, but instead uses female job class and compensation information imported from another broader public sector employer for its job rate line.

Permissible differences are allowed in the *Pay Equity Act*, R.S.O. 1990, c. P.7, as amended (the *Act*), to explain part of the pay gap between a female job class and its pay equity comparison. The use of permissible differences does not exclude a male job class from being used as a comparator.

The Act allows these permissible differences to exist under certain defined circumstances.

EXPLANATION

In all situations where permissible differences are allowed, the regular job rate for the job class in question must be clear. It is not possible to claim that a certain rate of pay is not the norm without being able to show the regular rate.

The onus is always on the employer to show that a permissible difference exists. Any permissible difference used must be clearly described in the pay equity plan.

There are five situations where differences in job rate are permitted:

- 1. a formal gender neutral seniority system
- 2. a temporary training or development assignment
- 3. a merit compensation plan based on formal performance ratings which has been brought to the attention of the employees
- 4. red-circling
- 5. a skills shortage causing a temporary inflation of compensation.

1. Formal Seniority System

A seniority system is used in compensation administration to increase the pay of employees at certain intervals after hiring or entry to a new job, usually to a set maximum.

A seniority system may create a permissible difference between a job rate that the employee's pay might suggest and the job rate used for pay equity purposes if the following apply:

- ► It is a formal system described in documents, known to employees and consistently applied.
- ► The system operates the same way for both female and male employees.
- ▶ The normal job rate for the job class is identifiable.

The seniority system of an organization or bargaining unit defines the relative length of service of employees. Employees with seniority are often given certain advantages in matters of promotion, layoff, recall and selection of vacation periods.

A formal seniority system is normally in written form and may be set out in a collective agreement. If not in written form, some historical and consistent application may be required. In either case, the employer must be able to demonstrate that the system recognizes service to the organization and is known to the affected employees.

Because the job rate for a job class is defined as the highest rate of compensation for that job class, it would be unusual to find a case where a seniority system had produced a pay rate higher than the job rate. These unusual circumstances are allowed under the permissible differences defined in subsection 8(1) of the *Act*.

When a job rate is different from the pay of an employee due to seniority, that employee's pay would be less than the job rate because he/she had not been employed in the position long enough to reach the job rate.

2. Temporary Employee Training or Development Assignment

Part of the job rate difference between a female job class and its comparator may be allowed due to a training assignment that:

- ▶ Is equally available to female and male employees.
- ▶ Leads to career advancement for employees in the program.
- ► Is temporary for each employee involved, either of a fixed duration, or until a specific goal is achieved.
- ▶ Identifies the normal job rate for the job class.

Training assignment rates may be either lower or higher than those paid for work of equal or comparable value.

For example, management trainees are often rotated through a number of non-managerial job classes as part of their training. Their pay may be at the rate of their management job class and higher than that of their co-workers who fill the job classes — lower valued, lower paid job classes — on a permanent basis.

On the other hand, sometimes trainees continue to receive the wage of their "home" position throughout the training period, even though they may be performing work of higher value.

3. Formal Merit System

A merit system may be the basis for a permissible difference if the performance rating system:

- ▶ Is based on *formal* performance ratings, with systematic ratings of how well employees are performing. These ratings must be applied consistently to all employees covered by a pay equity plan at regular, defined intervals and are systematically related to pay levels or increases.
- ▶ Was brought to the attention of employees in some formal and consistent way.
- ▶ Does not discriminate on the basis of gender.
- ▶ Identifies the normal job rate for the job class.

When the relationship of pay rates to performance ratings is not clear, the pay of the highest-paid incumbent would be used as the job rate.

4. Red-Circling

Red-circling, under the Act, has a very limited application:

- ► The value of a position must have been downgraded, based on a gender neutral re-evaluation process.
- ► The compensation of the incumbent has been frozen or pay increases have been curtailed until the lower compensation rate attached to the new lower-valued position catches up.

For example, if duties and responsibilities of a job class change significantly, the position would likely be re-evaluated and, as a result, be assigned less overall value. In this case, an incumbent may keep the compensation tied to the former value of the position but have future increases frozen or curtailed until the lower pay rate attached to the new lower-valued position catches up. No employee's compensation can be reduced as a result of pay equity.

5. Skills Shortage

The Act permits differences in compensation resulting from a skills shortage if:

- ► The skills shortage is causing a *temporary* inflation in compensation.
- ► The employer is having difficulties in recruiting employees with the requisite skills for positions in the job class.
- ▶ The job rate for the job class is identifiable.

An employer must be able to defend that a skills shortage exists. For example, an employer should consider whether the job postings have been advertised broadly in the media without success, for what length of time has the search gone on, and whether internal candidates have been trained and are now available.

Job rates reflecting inflation due to a previous temporary skills shortage are not exempt under this section. Employers could refer to outside data, such as labour market surveys, to help demonstrate a skills shortage, but they would still have to show difficulty in recruiting.

For example, when a company installed a widget-making system in 1982, widget-makers were in high demand and the company had to increase the pay offered to attract and retain staff. Within three years the situation changed. Students, attracted to the increased pay, flocked to widget-making courses. There were plenty of candidates, and entry level salaries did not increase as fast as other salaries. Widget-makers did receive, however, increases in line with others in the company. If a female job class is compared to the male job class of widget-maker, the difference in their salaries would not be justified, given the change in the original skills shortage. On the other hand, if the skills shortage were still in effect, some difference in compensation based on the skills shortage would be permissible.

RELEVANT SECTIONS IN THE ACT

Subsection 1(1) Defines compensation, job rate.

Section 6 Defines the achievement of pay equity using the

job-to-job comparison method.

Subsection 8(1) Defines permissible differences in compensation.

Section 21.3 Defines the achievement of pay equity using the

proportional value comparison method.

Section 21.15 Defines the achievement of pay equity using the

proxy comparison method.

REFERENCES

Pay Equity Implementation Series (Revised) — Guideline #5: Determining Job Class

Pay Equity Implementation Series (Revised) — Guideline #7: Determining the Gender Predominance of Job Classes

Pay Equity Implementation Series (Revised) — Guideline #9: Gender Neutral Job Comparison

Pay Equity Implementation Series (Revised) — Guideline #10: Which Job Classes to Compare

Pay Equity Implementation Series (Revised) — Guideline #11: Determining Job Rate

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Guideline #13: Pay Equity Adjustments



PAY EQUITY IMPLEMENTATION SERIES (REVISED)

The Pay Equity Implementation Series is designed to help in the self-managed process — or where bargaining agents are involved, the negotiated process — of achieving pay equity. The series is meant for employers, employees and bargaining agents and is published in a sequence that generally reflects the order in which questions arise in the process of developing a pay equity plan.

SIGNIFICANCE

Pay equity adjustments are the increases to the job rates of female job classes that were found to be underpaid after pay equity comparisons were made. Information about pay equity adjustments must be included in the pay equity plan.

If the job-to-job comparison method was used, the job rate of each female job class must be increased until it is equal to at least that of its male comparator job class.

If the proportional value comparison method was used, the job rate of each female job class must be increased until the relationship of its job rate to job value equals the pay relationship or pattern (often expressed as a job rate line) of a representative group of male job classes.

This guideline does not cover adjusting job rates for the proxy comparison method, a method that only certain public sector employers can use if a review officer from the Pay Equity Commission issues an order.

As with all aspects of pay equity, pay equity adjustments for union employees must be negotiated with the respective bargaining agent.

EXPLANATION

Scheduling Pay Equity Adjustments

Although most employers may phase in pay equity adjustments in annual increments, the *Pay Equity Act*, R.S.O. 1990, c. P.7, as amended (the *Act*), sets out a schedule of effective dates for making the first pay equity adjustments:

Dates for Starting Pay Equity Adjustments

Sector	Number of Employees	First Adjustment Effective Date
Public	all sizes	January 1, 1990
Private	500 ±	January 1, 1991
Private	100 to 499	January 1, 1992
Private*	50 to 99	January 1, 1993
Private*	10 to 49	January 1, 1994

^{*} Refers only to employers who have posted a pay equity plan

Employers who applied the proportional value comparison method to those female job classes that could not achieve pay equity by job-to-job comparisons are required to make the first adjustments resulting from proportional value comparisons as follows:

Amended Plans Using Proportional Value (PV) Comparisons

Number of	Adjustments	First	
Employees	Retroactive To	Adjustment	
50 or more**	January 1, 1993	January 1, 1994	
10 to 49**	January 1, 1994	January 1, 1994	

^{**} Private sector employers with 10 to 99 employees who have chosen to post a job-to-job pay equity plan posted a notice informing employees and bargaining agents of this decision [subsection 20(1)].

Private sector employers of 50 to 99 employees who chose *not* to post a plan must achieve pay equity using the proportional value comparison method effective July 1, 1993.

Private sector employers with 10 to 49 employees who chose not to post a plan must achieve pay equity using the job-to-job and proportional value comparison methods by January 1, 1994.

All employers must make subsequent pay equity adjustments on each anniversary of the legislated first adjustment date until pay equity is achieved. However, public sector employers using either the job-to-job or proportional value comparison methods must achieve pay equity by January 1, 1998.

Minimum Yearly Adjustments

The Act specifies a minimum required to be paid for pay equity adjustments each year. Employers must spend the lesser of:

▶ one percent of the employer's total payroll costs in Ontario in the previous year

or

▶ the amount required to achieve pay equity

Public sector employers using either the job-to-job or proportional value comparison methods might be required to spend more than one percent of their previous year's payroll in any one year to meet their 1998 deadline. Payments greater than one percent per year could be spread over one or more years up to 1998, or they could be made in the final year to achieve pay equity on January 1, 1998.

Private sector employers with fewer than 100 employees who chose *not* to post plans did not have the option of phasing–in adjustments:

Number of Employees	Pay Equity Method	Date Pay Equity Must be Achieved
50 to 99	Job-to-job Proportional value	January 1, 1993 July 1, 1993
10 to 49	Job-to-job or Proportional value	January 1, 1994

Calculating One Percent of Payroll

The minimum annual amount to be spent on pay equity adjustments is based on the employer's total payroll in Ontario for the previous year. Payroll includes all wages, salaries, overtime pay, shift differentials, commissions, and merit— or performance—based compensation. This list is not necessarily complete. Some employers may make other forms of payment which may be appropriately considered a part of the payroll.

The one percent cannot be spent on the administrative costs of implementing pay equity. The one percent also cannot be applied to costs arising from compensation changes in an establishment after the mandatory first adjustment date that widen the identified pay equity gap. These costs arise from the need to maintain pay equity; the one percent is for achieving pay equity.

When new employees are hired into a female job class which is in the process of achieving pay equity, their pay should be set at the current rate for that job class.

Adjusting the Pay of Female Job Classes

In section 9(3), the Act states:

Where, to achieve pay equity, it is necessary to increase the rate of compensation for a job class, all positions in the job class shall receive the same adjustment in dollar terms.

Under the Act, employers cannot reduce the compensation of any employee or any position or job class to achieve pay equity.

The decision of the Pay Equity Hearings Tribunal in Gloucester (No. 2) suggests that, in some circumstances, employees in a female job class can have their pay adjusted to appropriate steps in the salary range of the male comparator job class.

Job rate includes all salaries or wages, payments and benefits. Consider all these components when adjusting job rates to achieve pay equity. Only ignore benefits if they are equally available and of equal value to both the female and male job classes using the job—to—job comparison method.

Distributing Pay Equity Adjustments

An employer can have more than one establishment (one per geographic division in Ontario) and more than one pay equity plan (one for each bargaining unit and one for all other non-union employees).

The Act requires that each female job class that is entitled to an adjustment receive some adjustment each year until pay equity is achieved. It does not specify how an employer must allocate the one percent of payroll among the different pay equity plans, but the Act does set out some requirements for adjusting the compensation of job classes.

The female job classes with the lowest job rates in each pay equity plan must receive larger increases in dollar terms than other job classes in the same plan until pay equity is achieved *or* until they are paid at least as much as the next lowest-paid female job class(es) in the same plan.

Pay equity adjustments can be distributed in a number of ways within each plan as long as, in all cases, the female job class with the lowest job rate receives more:

- 1. Similar pay equity adjustments can be given to all female job classes requiring adjustments. The same adjustments in dollar terms are easiest to calculate.
- 2. Larger pay equity adjustments can be given to the female job classes that require the largest adjustment.
- Larger pay equity adjustments can be given to the job classes
 with small discrepancies, since pay equity can be achieved quickly
 for these job classes and future distribution calculations will be
 made simpler.

Whichever distribution strategy is chosen, all of the one percent must be spent. If pay equity plans for an establishment were completed at different times, it is important to check that, in total, one percent has been spent each year on pay equity adjustments.

Retroactivity - Late Adjustments

The phasing-in of annual adjustments does not apply to retroactive payments, which must be made when pay equity plans are posted late or when payments are delayed for any other reason.

For example, the complaint resolution process could have gone past the employer's first mandatory adjustment date. In this case, the incumbents of female job classes would receive increases retroactive to that date once the issue is resolved.

Retroactive payments covering a number of years should be calculated for each year as if the Act's adjustment requirements — one percent of payroll and fast-tracking the pay equity adjustments for the lowest-paid job class in each plan — were met on time. Retroactive payments are due when the plan is deemed approved and must be paid at once.

Employees who were in an affected female job class when a pay equity adjustment should have been made (the effective date) must receive appropriate payments even if they have left the job class or have left the organization by the time the adjustments are actually given. If they have left the organization, a reasonable effort must be made to locate them, such as sending a registered letter to their last known address.

RELEVANT SECTIONS IN THE ACT

Subsection 1(1)	Defines compensation, job rate, private sector, public sector.
Subsection 1(4)	Defines the method of determining number of employees.
Subsection 6(1)	Defines the achievement of pay equity using the job-to-job comparison method.
Subsection 9(1)	States that compensation cannot be reduced to achieve pay equity.
Subsection 9(3)	States all positions in a job class must receive the same adjustment in compensation in dollar terms.
Section 12	Requires comparisons of female and male job classes.
Subsection 13(2)	Requires adjustments to be shown in pay equity plans.
Subsection 13(3)	Requires the job class with the lowest job rate to receive the largest adjustment.
Subsection 13(4)	Requires first adjustments to total at least one percent of last year's payroll.
Subsection 13(5)	Requires subsequent adjustments at the anniversaries of the first legislated adjustment date must total at least one percent of payroll.
Subsection 13(6)	States that, except for retroactive payments or if ordered by the Tribunal, total payments do not have to be more than one percent of payroll.
Subsection 13(7)	States that pay equity in the public sector must be achieved by January 1, 1998.
Subsection 13(8)	Defines payroll to calculate the one percent.
Subsection 13(10)	States that adjustments must be incorporated into collective agreements.

Section 13.1	Describes the obligations of employers to make adjustments when a business is sold.
Subsection 21.2 (2)–(6)	States the requirements for job-to-job vs. proportional value adjustments.
Section 21.3	Describes when pay equity is achieved using the proportional value comparison method.
Subsection 21.5(2)	States that adjustments must be incorporated into collective agreements.
Subsections 21.10 (1)–(3)	States the schedule for first adjustments and first payments, states that sections 13(3) to 13(8) apply regarding proportional value adjustments.
Subsection 16(6)	States that late adjustments must be retroactive.
Subsection 17(3)	States that late adjustments must be retroactive.

REFERENCES

Pay Equity Implementation Series (Revised) — Guideline #3: Calculating the Number of Employees in the Private Sector

Pay Equity Implementation Series (Revised) — Guideline #9: Gender Neutral Job Comparison

Pay Equity Implementation Series (Revised) — Guideline #10: Which Job Classes to Compare

Pay Equity Implementation Series (Revised) — Guideline #11: Determining Job Rate

Pay Equity Implementation Series (Revised) — Guideline #14: Pay Equity Plans

Glengarry Memorial Hospital (1991), 2 P.E.R. 153

Lady Dunn General Hospital (1991), 2 P.E.R. 168

Gloucester (No. 2) (1991), 2 P.E.R. 208

Glengarry Memorial Hospital v. Pay Equity Hearings Tribunal and Ontario Nurses Association (23 December 1993), (Ont. Div. Ct.) [unreported]

"Questions and Answers," *Pay Equity Commission Newsletter*, Vol. 2, No. 8, October 1989, p. 7.

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Guideline #14: Pay Equity Plans



PAY EQUITY IMPLEMENTATION SERIES (REVISED)

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SIGNIFICANCE

The purpose of pay equity plans is to tell employees how pay equity will be achieved in their workplace.

Pay equity plans must include specific information such as which job classes were involved in comparisons, a description of the gender neutral comparison system used, how job rate adjustments will be made, and so on.

Pay equity plan documents must be posted prominently where they can be read by all employees affected by them. Copies must be provided on request to bargaining agents and to non-union employees.

In union workplaces, the bargaining agent and the employer must negotiate the pay equity plan.

In non-union settings, the employer initiates and is responsible for preparing the pay equity plan, but may want to involve employees in the process.

Private sector employers who came into existence after January 1, 1988 are not required to post pay equity plans, but they must achieve and maintain pay equity from the day the number of their employees totalled 10.

Private sector employers who had fewer than 10 employees on January 1, 1988 are not required to post pay equity plans, but they must achieve and maintain pay equity from the day the number of their employees totalled 10.

EXPLANATION

Number of Plans

In each establishment, there must be one pay equity plan for each bargaining unit and one for all non-union employees.

Contents of Pay Equity Plans

The Pay Equity Act, R.S.O. 1990, c. P.7, as amended (the Act), sets out a number of items that must be included in a pay equity plan. Keep in mind that the purpose of drafting a plan is to communicate the pay equity process to employees. Employees should be able to identify and track through the plan the job class that includes their position.

Job-to-Job Pay Equity Plans

Pay equity plans based on the job-to-job comparison method must:

- 1. Identify the establishment. The plan might also specify which group it covers within the establishment if there are union and non-union job classes.
- 2. List all female job classes covered by the plan and all male job classes that were evaluated as potential comparators. It also makes sense to list job classes that were gender neutral. If only female job classes exist in the establishment, no further information is needed. However, a plan that includes a statement about the lack of male job classes must still be posted.
- 3. Describe the gender neutral comparison system used to do the job comparisons. If a point-factor job comparison system was used, describe the subfactors that were used to evaluate job classes and explain how they were weighted. If a ranking system was used, describe its methodology. Include a definition of equal or comparable value, point banding, ranking, or any other method used to determine job classes of equal or comparable value.

- 4. List the results of the pay equity comparisons, including:
 - a list of all the female job classes and the male comparator job classes that were found to be equal or comparable in value
 - the difference in job rates between each female job class and its male comparator, or a statement that pay equity already exists for the female job class
 - a list of female job classes that did not find male comparators
- 5. Explain permissible differences in compensation between female job classes and their male comparators. The plan must identify the use of, and reasons for relying on, any differences in the job rate claimed to be permissible due to seniority, merit pay, a temporary training assignment, red-circling or a temporary skills shortage as defined in the *Act*.
- 6. Describe how compensation will be adjusted to achieve pay equity.
- 7. Note the date on which the first adjustments will be effective (and effective dates of any other adjustments made retroactively because the plan was posted late).

Adjustments for future years can only be estimated based on payroll projections. The employer can consider adding a statement to the plan saying that updates will be given each year. These updates could tell employees how their pay will be adjusted in the second and subsequent years when information about annual payroll costs becomes available.

Posting of Pay Equity Plans

The Act sets out the following schedule for the mandatory posting of pay equity plans based on the job-to-job comparison method:

Sector	Number of Employees	Mandatory Posting Date	
Public	all sizes	January 1, 1990	
Private	500+	January 1, 1990	
Private	100 to 499	January 1, 1991	
Private	50 to 99*	January 1, 1992	
Private	10 to 49*	January 1, 1993	

^{*} Employers who had fewer than 100 employees in 1987 could choose to post a pay equity plan and phase in pay equity adjustments, or *not* post a pay equity plan and achieve pay equity by their mandatory adjustment date.

Part III of the Act, which covered small employers, was repealed on January 1, 1994. After that date, employers with 10 to 99 employees no longer have the option of posting a plan.

Posting Amended and Replacement Plans

The proportional value comparison method was added to the *Act* in 1993. Employers with female job classes that could not achieve pay equity by job—to—job comparisons are required to apply the proportional value comparison method.

Existing pay equity plans must be replaced or amended to reflect proportional value comparisons and any resulting pay equity adjustments.

In addition to the information listed above, plans reflecting the proportional value method must include the following:

- ► The method used to achieve pay equity, either job-to-job or proportional value comparison, for each female job class.
- ► A description of the methods used to carry out the proportional value calculations:
 - A list of the male job classes that made up the representative group and how they were selected.
 - How the relationship of job rate to job value was determined for the representative group of male job classes.
- ► A description of any revisions made to the original job-to-job pay equity plan.

A sample pay equity plan incorporating the proportional value comparison method is included in the Appendix to this guideline.

Employers required to apply the proportional value comparison method to achieve pay equity for those female job classes that could not achieve pay equity by job-to-job comparisons must post amended or replacement pay equity plans by January 1, 1994.

Please Note: Employers are required to notify the Pay Equity Office if they are unable to achieve pay equity for a female job class by either the job—to—job or proportional value comparison methods. To do this, call or write to the Commission, or fill out a copy of the "Notice of Inability to Achieve Pay Equity" form, which is included at the back of this guideline, and mail it in.

Approval of Pay Equity Plans and Amendments

Pay equity plans do not need to be sent to or approved by the Commission. Where a plan has been negotiated with a bargaining agent, the plan is deemed approved when it is signed by both parties, provided it complies with the *Act*. It must then be posted by the employer.

It is recommended that if either party intends to submit the plan to be ratified or approved after the signing, this intention should be made clear early in the negotiation process.

A pay equity plan is binding on both the employer and the bargaining agent and prevails over relevant sections of an existing collective agreement. In fact, the adjustments to rates of compensation are considered to be incorporated into the collective agreement.

Plans covering non-union employees must initially be posted for 90 days, during which time employees affected by the plan may comment about it to the employer.

Employers then have seven days to prepare and post a notice stating whether the plan has been amended and, if so, a copy of the amended plan with the changes clearly noted.

From the date of the second posting, employees have 30 days in which to object to the plan to the Commission.

If no objection is filed within the 30 days period, the plan is deemed approved, assuming that it complies with the *Act*.

There is no requirement in the Act regarding how long the pay equity plan must remain posted, However, the Commission recommends the plan remain posted until pay equity is achieved or until the plan is updated.

RELEVANT SECTIONS IN THE ACT

Subsection 1(1)	Defines pay equity plan.
Section 2	Sets out circumstances where employers may combine for pay equity planning.
Section 10	Sets out the mandatory posting dates for job-to-job pay equity plans.
Section 13	Sets out the required contents of plans, dates and details about adjustments, that the plans are binding and prevail over collective agreements, and that adjustments are incorporated into collective agreements.
Section 13.1	Sets out the details of the obligations of a purchaser to implement the pay equity plan of the seller when the business is sold.
Section 14	Sets out procedures for the employer and bargaining agent negotiating a plan.
Section 14.1	Sets out procedures for amending a pay equity plan due to changed circumstances when a bargaining unit is involved.
Section 14.2	Sets out procedures for amending a pay equity plan due to changed circumstances when a bargaining unit is not involved.
Section 15	Sets out procedures for an employer preparing and posting a plan for non–union employees.
Section 16	Sets out procedures for objections to posted plans, for notices that bargaining agents and employers cannot agree, and for notices that pay equity cannot be achieved by doing job-to-job or proportional value comparisons.
Section 17	Sets out procedures at the Hearings Tribunal concerning objections arising from section 16.
Sections 19 and 20	Describes the option to post plans for employers with fewer than 100 employees.
Section 21.4	Requires plans to be amended or replaced to reflect the proportional value comparison method.
Section 21.5	States that amended or replacement plans are binding and prevail over collective agreements, and that adjustments are incorporated into collective agreements.

Section 21.6	Sets out the required contents of plans reflecting the proportional value comparison method.
Section 21.7	Requires pay equity plans reflecting the proportional value comparison method to be posted within six months of the effective date of the Pay Equity Amendment Act (1993).
Section 21.8	States that sections 14, 16 and 17 apply to plans reflecting proportional value comparisons involving bargaining units.
Section 21.9	States that non-union employees have rights to comment on and object to amended or replacement plans as described in section 15.
Section 21.10	Describes the procedures for adjustments arising from a plan reflecting the proportional value comparison method.
Section 24	Describes enforcement measures the Pay Equity Office may take if a plan is not being prepared or implemented.
Section 25	Sets out procedures at the Hearings Tribunal concerning objections arising from section 24.
Subsection 34(2)	States that review officers shall monitor the preparation and implementation of plans.

REFERENCES

Pay Equity Implementation Series (Revised) — Guideline #4: Definition of Establishment

Pay Equity Implementation Series (Revised) — Guideline #7: Determining the Gender Predominance of Job Classes

Pay Equity Implementation Series (Revised) — Guideline #8: Disclosing Information

Pay Equity Implementation Series (Revised) — Guideline #9: Gender Neutral Job Comparison

Pay Equity Implementation Series (Revised) — Guideline #10: Which Job Classes to Compare

Pay Equity Implementation Series (Revised) — Guideline #11: Determining Job Rate Pay Equity Implementation Series (Revised) — Guideline #12: Permissible Differences in Compensation

Pay Equity Implementation Series (Revised) — Guideline #13: Pay Equity Adjustments

Management Board Secretariat (1993), 4 P.E.R. 58

"How to Read Your Pay Equity Plan," Pay Equity Commission Newsletter, Vol. 3, No. 1, March 1991, p. 2-5.

FOR MORE INFORMATION WRITE OR CALL:

Pay Equity Commission 150 Eglinton Avenue East, 5th Floor Toronto, Ontario M4P 1E8 Ontario-wide (toll free) 1-800-387-8813

Toronto area (416) 481-3314



Directive no °14 est également disponible en français. Revised May 1994

APPENDIX 1

SAMPLE AMENDED PAY EQUITY PLANS

This is an example of a pay equity plan originally posted by the Fairpay Company to show the results of job-to-job comparison. The plan was then amended to show the results of a proportional value comparison.

PAY EQUITY PLAN

(job-to-job comparison method)

FAIRPAY COMPANY

123 Any Road, Toronto, Ontario

Date of posting and pay equity adjustments

Fairpay Company has posted the following pay equity plan on January 1, 1993. Pay equity adjustments will begin January 1, 1994.

Establishment

This plan covers all employees of Fairpay Company who are located at 123 Any Road, Toronto, Ontario.

Job Classes

The following job classes are female job classes:

Accounting Clerk
Accounting Supervisor
Administrative Assistant
Customer Service Clerk
Marketing Coordinator
Receptionist
Secretary

The following job classes are male job classes:

Controller
Market Analyst
Marketing Manager
President
Programmer
Sales Manager
Sales Representative
Shipper/Receiver
Warehouse Manager

Accountant

Method of comparison

A gender neutral job comparison system was used to measure the value of each job class. Points were assigned to each job class based on the following factors and subfactors:

Factor	Subfactor Knowledge (10% weight) Problem-solving/judgement (12% weight) Interpersonal skills/contacts (8% weight) Mental effort (15% weight) Physical effort (10% weight)		
Skill (30% weight)			
Effort (25% weight)			
Responsibility (35% weight)	Human resources (12% weight) Financial resources (8% weight) Information resources (10% weight) Material resources (5% weight)		
Working Conditions (10% weight)	Environment (10% weight)		

Evaluations were carried out by a committee.

Job classes of equal or comparable value were determined by dividing the system into fixed point bands, 75 points wide.

Comparison results

Following are female job classes which found male comparators, their male comparator job classes, and the total pay equity adjustment needed in each case:

Female *Po Job Class	oints	Male Comparator Job Class	*Points	Pay Equity Adjustment
Accounting Supervisor	570	Programmer	555	\$1.00/hr.
Administrative Assistant	490	Shipper/Receiver	470	\$1.00/hr.

Permissible differences

No permissible differences were found between job rates of female and male job classes.

First payment

The law requries that one percent (1%) of the 1993 payroll be spent on pay equity adjustments in 1994. Because total pay equity adjustments amount to less than the one percent, the full amount of pay equity adjustments will be made on January 1, 1994.

For further information, contact John Smith, Controller.

^{*} This information is optional.

AMENDED PAY EQUITY PLAN

The Pay Equity Act was amended on July 1, 1993. The amendments require that the proportional value comparison method be applied to all female job classes that could not achieve pay equity using the job-to-job comparison method.

As a result, the pay equity plan posted on January 1, 1993 is amended as follows:

Female job classes with male comparators

The job-to-job comparison method was used to achieve pay equity for the following female job classes:

Accounting Supervisor Administrative Assistant

Female job classes without male comparators

The proporational value comparison method was used to achieve pay equity for the following female job classes:

Accounting Clerk Customer Service Clerk Marketing Coordinator Receptionist Secretary

Representative group of male job classes

The following male job classes were used as the representative group of male job classes when applying the proportional value method:

Accountant Controller Market Assistant Marketing Manager Programmer Sales Representative Sales Manager Shipper/Receiver Warehouse Manager

Method of comparison

A gender neutral job comparison system was used to measure the value of each job class. Points were assigned to each job class based on the following factors and subfactors:

Factor	Subfactor		
Skill (30% weight)	Knowledge (10% weight) Problem-solving/judgement (12% weight Interpersonal skills/contacts (8% weight)		
Effort (25% weight)	Mental effort (15% weight) Physical effort (10% weight)		
Responsibility (35% weight)	Human resources (12% weight) Financial resources (8% weight) Information resources (10% weight) Material resources (5% weight)		
Working Conditions (10% weight)	Environment (10% weight)		

Evaluations were carried out by a committee.

Proportional value comparisons and calculations

The job value and job rates of all male job classes were plotted on a graph. A representative group of male job classes was selected from these male job classes.

A statistical method called regression analysis was used to determine the relationship between the value of male job classes and their job rates. This produced a formula which was then used to calculate pay equity job rates for female job classes.

Pay equity is achieved when the female job class is paid the pay equity job rate. Female job classes that are paid less than the pay equity job rate receive an adjustment until pay equity is achieved. Female job classes that are paid more than the pay equity job rate do not receive a proportional value adjustment.

Job Class	*Value	Present Job Rate	*Pay Equity Job Rate	Adjustment Required
Accounting Clerk	350	\$13.25	\$14.07	\$0.82
Customer Service Clerk	390	14.50	15.59	1.09
Marketing Coordinator	380	16.00	15.21	0.00
Receptionist	340	13.04	13.69	0.65
Secretary	400	14.72	15.97	1.25

Adjustments

The law requires that one percent (1%) of the 1993 payroll be spent on pay equity adjustments in 1994. Female job classes requiring pay equity adjustments under the job-to-job comparison method will receive the full increase on January 1, 1994. This was previously committed to in the original pay equity plan posted on January 1, 1993. The total amount of the adjustments for these female job classes amounted to less than 1% of payroll.

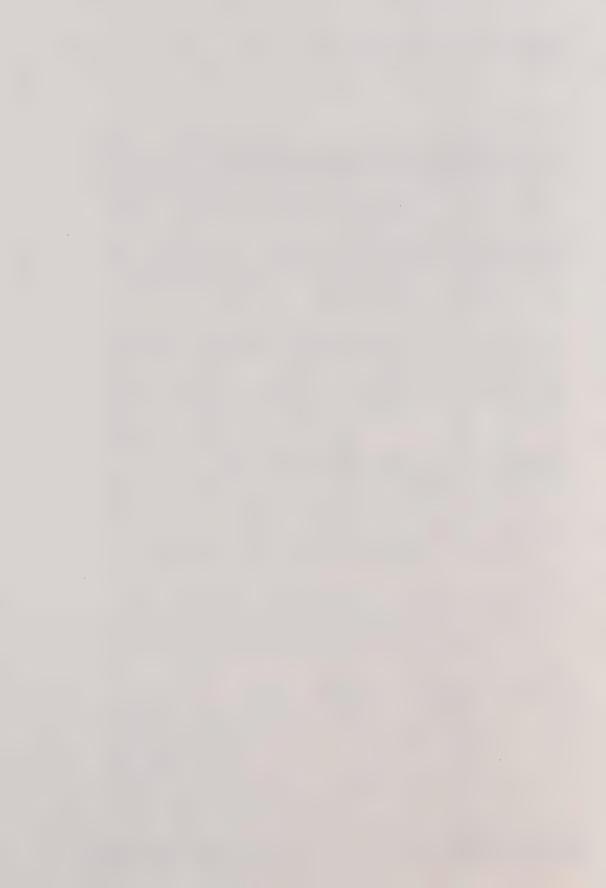
Female job classes requiring pay equity adjustments under the proportional value method will have their pay equity increases phased in. The unused portion of the 1% of 1993 payroll will be used toward 1994 proportional value adjustments.

The first adjustment will be paid on January 1, 1994 as follows:

Job Class	*Present Rate	1994 Adjustment	*Adjusted Rate 1994	*Remaining Adjustment
Accounting Clerk	\$13.25	\$0.62	\$13.87	\$0.20
Customer Service Clerk	14.50	0.60	15.10	0.49
Receptionist	13.04	0.65	13.69	0.00
Secretary	14.72	0.57	15.29	0.68

For further information, contact John Smith, Controller.

^{*} This information is optional



Guideline #15: Dispute Resolution I — Review Services

PAY EQUITY IMPLEMENTATION SERIES (REVISED)

The Pay Equity Implementation Series is designed to help in the self-managed process — or where bargaining agents are involved, the negotiated process — of achieving pay equity. The series is meant for employers, employees and bargaining agents and is published in a sequence that generally reflects the order in which questions arise in the process of developing a pay equity plan.

There are two guidelines dealing with the two phases of the dispute resolution process provided in the *Pay Equity Act*, R.S.O. 1990, c. P.7, as amended (the *Act*): Review Services and hearings before the Pay Equity Hearings Tribunal. This guideline deals with Review Services. Hearings before the Pay Equity Hearings Tribunal is the subject of Guideline #16.

SIGNIFICANCE

The Act sets out processes for resolving disputes that may arise in the course of establishing, implementing and maintaining pay equity. These include failures to agree on negotiated plans, objections to plans posted by employers, complaints concerning the implementation of plans, violations of the Act, or notices of inability to achieve pay equity using either the job-to-job or the proportional value methods of comparison.

The Pay Equity Commission is composed of the Pay Equity Office and the Pay Equity Hearings Tribunal, which are two independent bodies with distinct functions and powers. Any complaint, application or notice the Commission receives will be forwarded to the Review Services Branch of the Pay Equity Office.

A review officer will investigate and help the parties resolve the issues. If a settlement cannot be reached, the review officer has two options: issuing an order or a decision. Any party objecting to a review officer's determination may request a hearing before the Pay Equity Hearings Tribunal.

EXPLANATION

Asking for Help to Resolve a Dispute

To get help in dispute resolution, call, write a letter or submit an "Application for Review Services" form to the Case Manager at the Pay Equity Office. Forms are available from the Commission or any Ministry of Labour district office.

Applications will be accepted from anonymous applicants. All applications will be reviewed to ensure that they are complete before a review officer is assigned. Applicants whose identities are known may be contacted for more information or clarification.

A copy of the application form is attached to this guideline:

- ▶ Part 1 requests information about the applicant. If the applicant is not an individual employee (and not anonymous), the name of the person to contact (such as a bargaining agent or agent acting for the employee) is required.
- ▶ Part 2 requests information about the other party involved (the respondent, usually the employer), including a contact name.
- ▶ Part 3 is intended to give the Commission some idea of the nature of the dispute. If the applicant is unsure which box to check, a brief description under "Other" will do. The exact basis for the application will be identified during the investigation.
- ▶ Part 4 provides for the name and signature of the person submitting the form if the applicant is not anonymous.
- ▶ Part 5 enables the applicant to request that his/her identity not be revealed to the respondents.

Keeping the Identities of Applicants Confidential

Applicants for Review Services may keep their identity from the respondent in three ways:

1. Applicants do not have to identify themselves on the application form or when they call the Commission. *No one* will know the applicant's identity. This is reasonable where a complaint is general, for example, where no pay equity plan has been posted. However, it can make investigation difficult or very limited in cases where review officers need more specific or detailed information.

- 2. Applicants can identify themselves on the application form but ask that their identity not be revealed to the respondent. Review officers take the confidentiality of the identity of applicants seriously. If a review officer feels that the investigation might reveal the applicant's identity, the review officer will not proceed without the applicant's permission.
- 3. Applicants may use an agent to represent them at both the Review Services and Hearings Tribunal stages. Subsections 32(3) and (4) of the *Act* allow an employee or group of employees to appoint a person or organization to act as an agent before a review officer and/or the Hearings Tribunal, by submitting a written request. In this case, only the agent's identity will be known. Agents will replace employees as parties to the proceedings, and they may take any of the actions which the *Act* allows employees. (See the note at the end of this guideline regarding the Pay Equity Advocacy and Legal Services.)

The Role of the Review Officer

The role of the review officer is to investigate, mediate and, if necessary, order a resolution to the dispute. The review officer will contact the applicant to discuss the issue(s) involved, to clarify an issue or to suggest an approach.

If further action is needed, the review officer will meet with the applicant and respondent, jointly or separately, as appropriate. Joint meetings will usually be held at the employer's premises. Efforts will be made to arrange meetings with applicants at locations and times convenient for them. The specific needs of each applicant will determine the nature and extent of a review officer's involvement.

If a settlement cannot be effected, a review officer may issue an order or notify the parties and the Tribunal (or in some cases only the complainant) that he/she will not be writing an order.

Types of Disputes Investigated

As a result of a complaint, objection or failure to post a pay equity plan, a review officer may effect a settlement, make an order, advise the parties and the Hearings Tribunal that an order will not be made, or decide not to consider the complaint because, under subsection 23(3) of the Act, its subject matter is considered to be trivial, frivolous, vexatious or made in bad faith or because the complaint is not within the jurisdiction of the Commission. What follows are some of the types of disputes which review officers investigate.

A. Complaints about the preparation of plans

The Act establishes separate methods of preparing pay equity plans for a bargaining unit and for non-union employees with, consequently, different processes for dispute resolution. For the requirements for pay equity plans, see Guideline #14.

1. In a union setting, failure to agree on a pay equity plan or its amendments:

Employers required to post pay equity plans on or before the mandatory posting date specified in the *Act* must immediately inform the Commission of a failure to agree and to post a plan on time. Bargaining agents may also notify the Commission.

A plan may be amended to reflect changed circumstances in an establishment. For a plan covering a bargaining unit, if these changes have not been agreed to within 120 days of an employer giving a notice claiming changed circumstances to a bargaining agent, or vice versa, the employer must notify the Commission. Bargaining agents may also notify the Commission of the failure to agree.

If an amended or replacement pay equity plan reflecting the proportional value comparison method is not agreed to by January 1, 1994, the employer must notify the Commission. Again, bargaining agents may also notify the Commission.

Plans are deemed approved by the Pay Equity Commission when they are agreed to between the employer and the bargaining agent, and posted in the workplace. Note that in the *Ontario Northland* decision of September 30, 1992 the Tribunal decided that the pay equity plan, which was the subject of the complaint, was not deemed approved because it did not meet the standards of the *Act*.

Negotiations between employers and bargaining agents may require third party assistance to deal with issues if bargaining has reached an impasse. Either party may request a review officer be appointed at any time prior to the mandatory posting date.

When a request is received, a review officer will be appointed to investigate and help the parties to reach a settlement. If a review officer is unable to effect a settlement between the parties, the officer may issue an order. If the officer determines that only the issues in dispute are to be addressed, the order will be made under subsection 24(1) and the parties will be directed to resume negotiations on the rest of the pay equity plan. In this case, the review officer will monitor the continued efforts of the parties until a plan is completed.

Alternatively, the review officer may order on all the remaining issues and provide a completed plan to the parties. This type of order is issued under subsection 16(2). The employer must post a copy of the plan that reflects the settlement or order.

Review officers may also notify the parties and the Hearings Tribunal that an order will not be made, or he/she may notify the complainant of a decision not to consider the complaint under the grounds listed in subsection 23(3).

2. In a non-union setting, objecting to the plan:

The Act provides a period of 90 days following the mandatory posting date for non-union employees to review their posted plan and submit comments to their employer. This comment period also applies to a replacement plan or to amendments made to a plan that was posted to reflect proportional value comparisons. Non-union employees may bring to the employer's attention any disagreement they have with any elements of these plans or with the amendments in the case of an amended plan.

The employer must review employee comments and post a notice indicating whether any changes have been made to the plan with the amendment clearly noted. If changes have been made, the employer must post a copy of the amended plan with the amendments clearly noted. The notice may be posted at any time after receiving the comments, but no later than seven days following the end of the 90-day review period.

During the 30 days immediately following the re-posting, an employee covered by the plan may object to the plan by filing an "Application for Review Services" form, or by calling or writing to the Commission. Those who may file an objection are:

- Employees who submitted comments to the employer but who found the plan was not changed, or not changed to their satisfaction.
- Employees who have not submitted comments to the employer. This is an opportunity for those employees who do not want the employer to know that they have objections to the pay equity plan to file objections anonymously.

When a request is received, a review officer will be appointed to investigate and help the parties to reach a settlement. If a review officer is not successful in effecting a settlement, the officer will order under subsection 16(2). A plan that reflects the settlement or order must be posted in the workplace.

If any employees covered by the plan object to the plan that reflects the order, they have 30 days to request a hearing before the Tribunal. Similarly, any employee not party to a settlement may request a Tribunal hearing within 30 days of the posting of a plan that reflects a settlement reached with other employees.

If the 30-day period following the re-posting passes without objections being filed with the Commission, the plan is deemed approved by the Commission and must be implemented by the employer according to its terms. A subsequent complaint under section 22 of the *Act*, if successful, might overturn the deemed approved status.

Subsection 9(2) states that no reprisal can be taken against employees who raise issues or make complaints about a pay equity plan. An employer who is alleged to have contravened this subsection must prove that a contravention has not occurred.

B. Complaints about implementing plans

Complaints about implementing pay equity plans may be filed with the Commission at any time. The dispute resolution process is the same in both union and non-union settings for any of these complaints:

1. Complaint about implementation:

If an employer fails to implement a posted plan according to its terms, for example, by not making pay equity adjustments indicated in the plan, an employee, group of employees or bargaining agent may file a complaint.

2. Complaint that a plan is inappropriate due to changed circumstances:

At any time after a plan is deemed approved, a non-union employee, group of employees, employer or bargaining agent may file a complaint alleging that the plan is no longer appropriate due to changed circumstances. This type of complaint might arise from:

- a job class that has changed due to new technology
- · a newly created job class that could be used as a comparator
- · a new bargaining unit being certified

Note that the Tribunal addressed the rights of a new bargaining agent and the represented employees in St. Joseph's Villa (19 August 1993) 0345–92 (P.E.H.T.).

C. Complaints about a contravention of the Act

An employer, employee, group of employees or bargaining agent may file a complaint with the Commission at any time that alleges a contravention of the *Act*, its regulations or an order of the Commission. Some examples of possible contraventions are:

- ▶ a reduction in compensation in order to achieve pay equity
- ▶ a failure to achieve pay equity
- ▶ a failure to maintain pay equity
- ▶ a pay equity plan was not prepared (or negotiated) and posted
- ▶ an allegation of reprisal by the employer because the complainant has exercised his/her rights under the Act

In the complaints noted above, the following outcomes are possible:

- ▶ The review officer may effect a settlement between the parties.
- ▶ The review officer may decide not to consider a complaint because it is not within the jurisdiction of the Commission or because it is trivial, frivolous, vexatious or made in bad faith [subsection 23(3)].
- ► The review officer may make an order on the outstanding issue(s) [section 24 and subsection 16(2)].
- ▶ In some cases, the review officer may not effect a settlement and may decide not to make an order on the outstanding issue(s) [subsections 23(2),(4)].

When a Resolution Cannot Be Reached

Review Officers' Orders

Orders will vary depending on the nature of the dispute. In general, an order will set out the steps which the employer and bargaining agent, if any, must take to prepare or revise the plan, or to comply with the Act.

A Hearing Before the Hearings Tribunal

All orders are binding on the parties named in the orders. They can be varied or revoked as a result of either party filing an application requesting a hearing at the Pay Equity Hearings Tribunal.

If an order is not followed, the review officer may refer the matter to the Tribunal.

After the parties review the review officer's order or decision, a request for a hearing may be made to the Hearings Tribunal regarding the issue(s) in dispute.

RELEVANT SECTIONS IN THE ACT

- Subsection 1(1) Defines review officer, states that a review officer may order that job classes are female or male job classes.
- Subsection 6(7) States that a review officer may decide that a series of job classes may be treated as a group of jobs.
- Section 16 Sets out the sequence of events when a review officer investigates:
 - notice stating that an agreement has not been reached by an employer and a bargaining agent on a pay equity plan [subsection 14(6), section 21.20] or on amendments to a pay equity plan [subsection 14.1(3)]
 - notice of objection to a posted pay equity plan [subsection 15(7), section 21.21] or to amendments to a plan [subsection 14.1 (6)]
 - notice that pay equity cannot be achieved by the job-to-job or proportional value comparison methods [subsection 21.2 (6), section 21.8, subsection 21.9 (3)].

Section 21.12 Describes the review officer's role in investigating notices that an employer could not achieve pay equity using either the job-to-job or proportional value comparison methods.

Section 21.23 Describes the powers of review officers in relation to the proxy comparison method.

Section 23 Sets out the sequence of events when review officer investigates:

- a complaint that there has been a contravention of the Act, regulations or an order [subsection 22 (1)]
- a complaint that a pay equity plan is not being implemented according to its terms [subsection 22 (2)(a)]
- a complaint that a plan is no longer appropriate due to changed circumstances in an establishment [subsection 22 (2)(b)]
- a complaint concerning a notice that pay equity cannot be achieved using either the job-to-job or proportional value comparison methods.

Section 24 Sets out the review officer's options after investigating complaints under section 23 or in response to contravention revealed from monitoring [subsection 34 (2)].

Subsection 32(1) Lists the parties to a review officer's proceedings.

Section 34 Lists the powers of review officers.

Section 35

Sets out the restrictions on review officers' powers of entry, details of acquisition and use of warrants, that review officers may not be obstructed, etc.

REFERENCES

Pay Equity Implementation Series (Revised) — Guideline #16: Dispute Resolution II — Pay Equity Hearings Tribunal Ontario Northland (1992), 3 P.E.R. 166 St. Joseph's Villa (1993), 4 P.E.R. 33

PAY EQUITY ADVOCACY AND LEGAL SERVICES (PEALS)

PEALS is a non-profit legal clinic which provides, among other services, free confidential legal advice and representation for women employees and for bargaining agents with limited resources.

PEALS 40 Eglinton Avenue East, Suite 804 Toronto, Ontario M4P 3A2

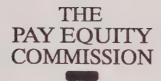
Phone: (416) 482–1338 FAX: (416) 482–1650

FOR MORE INFORMATION WRITE OR CALL:

Pay Equity Commission 150 Eglinton Avenue East, 5th Floor Toronto, Ontario M4P 1E8

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Guideline #16: Dispute Resolution II — Pay Equity Hearings Tribunal —



PAY EQUITY IMPLEMENTATION SERIES (REVISED)

The Pay Equity Implementation Series is designed to help in the self-managed process — or where bargaining agents are involved, the negotiated process — of achieving pay equity. The series is meant for employers, employees and bargaining agents and is published in a sequence that generally reflects the order in which questions arise in the process of developing a pay equity plan.

There are two guidelines dealing with two elements of dispute resolution: Review Services and hearings before the Pay Equity Hearings Tribunal. This guideline deals with hearings before the Pay Equity Hearings Tribunal. Guideline #15 deals with dispute resolution concerning Review Services.

SIGNIFICANCE

The Pay Equity Commission, created by the *Pay Equity Act*, R.S.O. 1990, c. P.7, as amended (the *Act*) consists of two separate and independent parts: the Pay Equity Office, which includes the Review Services Branch, and the Pay Equity Hearings Tribunal.

The Pay Equity Hearings Tribunal is a quasi-judicial body and has exclusive jurisdiction to determine all questions of fact or law that arise in any matter before it. The Tribunal is subject to the requirements of the *Statutory Powers Procedures Act* in the conduct of hearings before it.

The action or decision of the Tribunal is final and conclusive for all purposes. Decisions of the Tribunal cannot be appealed but may be judicially reviewed where a party alleges the Tribunal has made jurisdictional errors or rendered a patently unreasonable decision.

EXPLANATION

The Tribunal's Mission Statement

The purpose of the *Act* is to redress systemic gender discrimination in compensation for work performed by employees in female job classes. Its implementation contributes to a fairer and more productive workplace where women and men may achieve equality.

The goals of the *Act* can best be achieved through the co-operation of employers, bargaining agents and employees. The Pay Equity Hearings Tribunal is committed to encouraging settlement between the parties. Where parties are unable to resolve their differences, the Tribunal's decision will be final and binding.

The Tribunal is committed to a hearing process that balances the needs to be fair, accessible and efficient.

Structure of the Tribunal

The Tribunal consists of a chair, one or more vice chairs and equal numbers of members representative of employers and employees. All of these positions are filled through appointments made by the Lieutenant Governor in Council.

Except in extraordinary circumstances, tripartite panels consisting of a chair, a member representative of employers and a member representative of employees will be established to hear each case. The members of each panel bring their specialized expertise and understanding of pay equity, compensation and labour relations to the hearing process. They do not favour their particular constituency. They determine the issues in dispute based on the evidence given and the arguments made by the parties.

How Complaints Come Before the Tribunal

An employer, employee, group of employees or bargaining agent may file a complaint with the Pay Equity Commission alleging a contravention of the Act, its regulations or an order of either a review officer or the Tribunal. After the Review Services Branch receives the complaint, a review officer will be assigned to investigate and attempt to settle the issue(s) in dispute. If the review officer is unable to settle the matter, he/she may do one of the following:

- 1. Make an order.
- 2. Notify the parties and the Tribunal no order will be issued.
- 3. Decide that the complaint should not be considered because it is either trivial, frivolous, vexatious or made in bad faith or does not fall within the Commission's jurisdiction.
- 4. Refer a failure to comply with the order to the Tribunal for determination.

A party may request a hearing before the Tribunal if:

- 1. The review officer has notified the parties that they have not been able to effect a settlement and will not be issuing an order.
- 2. A party objects to a review officer's order or disagrees with the review officer's refusal to consider the complaint.
- 3. The review officer refers the matter to the Tribunal.
- 4. A party alleges that a review officer's order has not been followed or a settlement between the parties is not being implemented.
- 5. A party seeks the consent of the Tribunal to prosecute for an offence under the *Act*.

Hearings before the Tribunal are treated as *de novo* proceedings and, as such, are not affected by a review officer's decision or order.

Rules of Practice

The Tribunal has established Rules of Practice for the conduct of proceedings before it. The rules are explained in detail in A Guide to the Pay Equity Hearings Tribunal Rules, which is available in English and French. The publication also contains forms for pleadings (documents that set out the issues and position of each party). The forms are not mandatory if all the necessary information is provided in another format.

Responsibility for service of all pleadings is placed on the parties, not on the Tribunal. Parties must complete statements of service (Form 3) which verify to the Hearings Tribunal that they have served documents on the other parties. The Tribunal may also order pre-hearing disclosure of evidence and documents if the Tribunal considers it necessary.

A party requesting a hearing before the Tribunal is required to complete an application (Form 1), serve it to all other parties and file it with the Registrar of the Tribunal. The application must identify the respondent(s) to the application and state the issue, facts and events, but not the evidence intended to prove them. The application must also identify the remedy sought from the Tribunal.

Each respondent is required to complete a response to the application (Form 2) noting the facts, events and issues. A party may choose to file a reply to any new matters, arguments or issues raised in a response.

A party will not be permitted to raise a fact, event or issue that is not set out in the application, response or reply, except with the permission of the Tribunal.

The Tribunal will hold a pre-hearing conference to:

- ▶ identify and narrow the issues
- ▶ get agreement on the facts, events and documents
- resolve the application where possible
- ▶ encourage the exchange of all relevant documents
- ▶ identify and attempt to resolve procedural and preliminary objections

The vice chair who conducts the pre-hearing conference will not be involved in determining the outcome of the application.

The Tribunal will hold hearings in regional centres within Ontario. Parties will be asked where they want the hearing to be held, and to estimate the number of hearing dates needed based on the complexity of their case, the number of witnesses and the extent of the submissions.

The Registrar will set the date, time and place for the hearings, which are usually held on consecutive days. Normally, the Registrar of the Pay Equity Hearings Tribunal will determine mutually convenient hearing dates with the parties involved. Every attempt will be made to schedule the first day of a hearing within 60 days of receiving the initial request for a hearing.

The Tribunal will make sure the hearing room is wheelchair accessible and provide services for the hearing or visually impaired where such needs are identified. In addition, the Tribunal will conduct hearings in either English or French. Translation services for other languages may also be requested.

The Tribunal is committed to an ongoing consultation with the community regarding its procedures. In order to better achieve the goals of fairness, accessibility and efficiency, Tribunal procedures may be modified over time.

RELEVANT SECTIONS IN THE ACT

Section 17	Discusses hearings in response to complaints and objections regarding an ordered pay equity plan.
Section 21.23	Establishes the Tribunal's power to order information from or to a seeking employer for the purposes of proxy comparisons.
Subsection 24(5.3)	Places the burden of proof on the respondent where they are alleged to have contravened section 9(2) of the <i>Act</i> .
Section 25	Sets out the Tribunal's power to hold hearings, to decide issues before it and to make orders binding on the parties.
Section 25.1	Provides for the binding settlement of matters, which the Tribunal is required to hold a hearing for, and for enforcement of these settlements.
Section 28	Defines the composition and staffing of the Tribunal.
Section 29	Sets out the powers and duties of the Tribunal regarding the form and process of hearings.
Subsection 30(1)	States that the Tribunal has exclusive jurisdiction to determine matters before it for a hearing, and that the Tribunal's decisions or orders are final and binding.
Subsection 30(2)	States that the Tribunal has the power to reconsider its decision or order and may vary or revoke same.
Subsection 32(1)	Lists who may be parties to a hearing before the Tribunal.
Subsection 32(4)	Sets out the right of an employee or group of employees to remain anonymous for proceedings before the Tribunal.
Subsection 32(1.1)	Establishes the Tribunal's authority to require posting of notices in the workplace.

REFERENCES

Pay Equity Implementation Series (Revised) — Guideline #15: Dispute Resolution I - Review Services

Rules of Practice

A Guide to the Pay Equity Hearings Tribunal Rules

Pay Equity Reports Volume I

Pay Equity Reports Volume II

Pay Equity Reports Volume III

Pay Equity Reports Volume IV

FOR MORE INFORMATION WRITE OR CALL:

The Registrar Pay Equity Hearings Tribunal Tribunals' Office 150 Eglinton Avenue East, 5th Floor Toronto, Ontario M4P 1E8

Ontario-wide (toll free): 1-800-668-3946 Toronto area:

(416) 314-0004

Facsimile:

(416) 314-8743





Directive no °16 est également disponible en français. Revised May 1994



Application Form 1

Tribunal File Number

For Office Use Only

Formulaire également disponible en français

(Page 1 of 4)
Please Print Information Clearly

	Flease Fill Illion	disponible en trançais		
	Name of employee(s), trade union or employer making this request for a hearing. (Attach a list if this Application is on behalf of a group of employees.) Leave blank if you are applying anonymously - complete only the Lawyer or Other Agent part of this section.			
	Name			
A	Street Address			
P P	City/Province	Postal Code		
L	Area Code Telephone No. - -	Fax. No. - -		
c C	Name of Contact Person			
A N	Lawyer or Other Agent - If a lawyer, or other agen	t is acting on your behalf, complete this section.		
ij	Name			
S)	Name of firm, if appropriate			
	Street Address			
	City/Province	Postal Code		
	Telephone No. - -	Fax. No. - -		
	Name the employer(s), trade union(s), employee(s) by this proceeding. Attach additional pages if neces	or anyone else whom you believe may be affected sary.		
	EMPL	OYER(S)		
2	Name			
S	Street Address			
P 0	City/Province	Postal Code		
N	Area Code Telephone No. - -	Fax. No. - -		
D E	Name of Contact Person			
N T	Name of Lawyer or Agent	Name of firm, if appropriate		
S)	Street Address			
	City/Province	Postal Code		
	Area Code Telephone No.	Fax. No.		



Application Form 1 - continued (Page 2 of 4)

Tribunal	File	Number	
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For Office Use Only

Official	TRADE UNI	ON(S)		
	Name			
	Street Address			
	City/Province	Postal Code		
R	Area Code Telephone No. - -	Fax. No. Area Code - -		
E	Name of Contact Person			
S	Name of Lawyer or Agent	Name of firm, if appropriate		
0	Street Address			
N B	City/Province	Postal Code		
E	Telephone No. Area Code	Fax. No. Area Code		
Ţ	EMPLO	YEE(S)		
S	Name			
	Street Address			
	City/Province	Postal Code		
	Telephone No. - -	Fax. No. Area Code		
	Name of Contact Person			
	Name of Lawyer or Agent	Name of firm, if appropriate		
	Street Address			
	City/Province	Postal Code		
	Telephone No. Area Code	Fax. No. Area Code		
3	Date of Review Officer's Order or Decision, if one was	s issued D M Y		
REV	File Number Assigned by Review Services			
	Review Officer's Name			
I I E C	If possible, attach a copy of the Review Officer's Order of	or Decision, or the Pay Equity Plan to which you are objecting.		
V E		Copy Attached Copy NOT Available		



Pay Equity Hearings Tribunal

Application

Form 1 - continued (Page 3 of 4)

Tribunal File Number

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A completed Application must include a general statement of the issue or the reason for requesting a hearing, and a clear and concise statement of the facts and events upon which you rely. This should include: what did or did not happen, who was involved, and when and where these events took place. Do not include the evidence intended to prove these facts and events.

Please note: Except with the Tribunal's permission, you may not raise any issue, fact or event not set out in this Application.

Attach additional pages if necessary.

5

N E D

ABS

How do you wish the order, decision, or plan changed? Describe what you wish the Tribunal to order as a result of this Application. Include all monetary and other redress you seek.

Attach additional pages if necessary.

Application

Form 1 - continued (Page 4 of 4) Tribunal File Number

For Office Use Only

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•	(SEC. 1)

D.	Please describe which, if any, of the following services you require.		
	French Language services		
H E	Translation Services for witnesses at Hearing		
A R I	Accommodation Services (for example - services for the hearing or vision impaired or	r wheelchair acc	cess)
N G S	The Tribunal will attempt to accommodate you, but may not be able to meet your spec	cific request(s).	
	The Tribunal may hold hearings in the following regional centres: Kingston, London, No Sarnia, Sault Ste. Marie, Sudbury, Timmins, Thunder Bay, Toronto and Windsor. A dec the hearing will be based on the needs of the Tribunal, the parties and the witnesses.	orth Bay, Ottawa ision on the loc	ation of
	In which city would you prefer the hearing?		
	Reason for preference		
RELATED NS	Please identify any other applications to the Pay Equity Hearings Tribunal relating to the	s proceeding.	
8 S 1 G	This document consists of pages in total. Please attach Statements of Servic Respondent and any others affected to the copy of the Application you file with the Tril	e (Form 3) for e	each
N A T	Dated at this day of		_ 19
U	Name (Please print) Signature	6 AP.	
R	Position Title	· · · · ·	Alle
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				Tribunal File Number	
) ontario	Pay Equity Hearings Tribunal	Respons Application Form (Page 1 o	tion 2 ^{f 3)}	Formulaire également disponible en français	
1	Applic		h you are resp	onding	
IDENTIFICATION	Name of Applicant(s): Date of Application: Tribunal File No:				
2	Are you: a trade union Leave blank if you are an employee of the Agent part of this section.	employer or group of employe	employees(s)	other nously - complete only the Lawyer or	
	Name				
R	Street Address				
E S	City/Province		Postal Code		
E S P O	Area Code Telephone No. _	-	Fax. No.	Area Code	
N	Name of Contact Person				
D N T (S)	If a Lawyer, or Other Agent is acti	ng on your behalf,	complete the following	g section:	
(3)	Name of Lawyer or Agent		Name of firm, if app	ropriate	
)	Street Address				
	City/Province		Postal Code		
	Telephone No. Area Code	-	Fax. No.	Area Code	



Response to Application

Critario		- continued e 2 of 3)	-
3	Are there any employee(s), trade union(s), or exhausting whom you believe may be affected by this productional pages if necessary	beeding. It is not necessary to identity par	ed by the Applicant ties already named
0	Name		
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E R	City/Province	Postal Code	ansatation/reg cv shootstake
S	Telephone No. - -	Fax. No.	9000
A F F	Name of Contact Person (if known) Lawyer or Other Agent, if known:	CONTRACTOR CONTRACTOR AND CONTRACTOR	AND THE PROPERTY AND ADDRESS OF THE PROPERTY A
E	Name of Lawyer or other Agent	Name of firm , if appropriate	принародня мерен туптення
T E	Street Address		
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	Telephone No. Area Code - -	Fax. No. Area Code	
4	A completed Response must include a brief responstatement of the facts and events upon which you or Other Parties). Do not include the evidence it	rely (including those facts and events not ra	d a clear and concise lised by the Applicant
	Please note: Except with the Trbunal's permission Response.	on you may not raise any issue, fact or eve	
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Attach additional pages if necessary.

Tribunal	File	Number		

罗西等	Pay Equity
人民	Hearings
	Tribunal

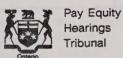
French Language Services

Ortiario	Pay Equity Hearings Tribunal	Response to Application Form 2 - continued (Page 3 of 3)	
5	Describe the appropriate	outcome of the Application.	
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Please describe which, if any, of the following services you require:

H E	Translation services for witnesses at Hearing	
A	Accomodation Services (for example - services for the hearing or vision impaired or wheelchair access)
N G	The Tribunal will attempt to accommodate you, but may not be able to meet your specific request(s).	
5 55	The Tribunal may hold hearings in the following regional centres: Kingston, London, North Bay, Ottawa, Sarnia, Sault Ste. Marie, Sudbury, Timmins, Thunder Bay, Toronto and Windsor. A decision on the locatio hearing will be based on the needs of the Tribunal, the parties and the witnesses. In which city would you prefer the hearing? Reason for preference	
A P	Please identify any other applications to the Pay Equity Hearings Tribunal relating to this proceeding.	
E L L I		
A C T A		

D 0 N S This document consists of _____ pages in total. Please attach Statements of Service (Form 3) for the Applicant (s), Respondent(s) and any others affected to the copy of the Response you file with the Tribunal. S G Dated at _ this day of (month) (town, city, etc.) Signature Name (Please print) Position Title



Statement of Service Form 3

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Formulaira également disponible en franchis

Ontario	Please Print Information Clearly disposible on français
NOTE	The purpose of this statement is to verify that a copy of a document was delivered to a party. A Statement of Service (Tribunal form 3) or a statement containing all the information required in this form, must be completed for every document served, for each party. In addition, a copy of the facsimile cover transmission record, or the courier or postal receipt may be required as evidence to support this statement. To prove service of a Summons to Witness, complete Form 5
1 C S E N A M E	Name of Applicant(s): Name of Respondent(s)/Other(s): Date of Application:
2	Acting on behalf of: Check (>) one: Applicant Respondent Check (>) one: Applicant Respondent Who represents
	who represents :
METHOD OF SER	1. What was served - Check (⋈) one: Application Response Reply Report of an Expert Witness Other (specify): 2. Method of Service - Check (⋈) one: Personal Delivery Courier (including Priority Post) Facsimile copier (FAX) Regular Mail Registered Mail Other (specify method and time frame agreed to by Tribunal or Registrar):
R	3. Name of courier, agent or service used:
V C E	4. Time document(s) sent: 5. Date document(s) sent: 6. If personal delivery, address where you served document(s):
4	Dated at this day of, 19
	(monal)
	Name of Person Who Served (Please print) Signature of Person Who Served Position of Person Who Served



Epstaningfür 126-09577 (26-320)